Model Revocation on
Administrative Determination
(Road) Law Revised Edition

State Laws on Early License Revocation for Driving While Under the Influence

U.S. Department of Transportation
National Highway Traffic Safety Administration

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Background and Purpose of ROAD

Virtually all of the states have laws which provide for some driver licensing action, generally a suspension or revocation, against a person who has been convicted of driving a motor vehicle while under the influence of alcohol or drugs. Unfortunately, these laws do not always provide a rapid and certain means of removing such drivers from the road and deterring this dangerous driving conduct.

Most of the laws base the licensing action upon the person's conviction for driving while under the influence. When the criminal court finds the person guilty, it enters a conviction. The law requires a record of this conviction to be forwarded to the department of motor vehicles. Generally, this is the first and only notice the department will receive that the person has committed the offense. On the basis of this record of the conviction, the department takes the license action authorized or required by law.

Unfortunately, convictions are not always fast and sure in drunk driving cases. A backlog of cases in the court may mean a delay of many months before the criminal charges come to trial. Even without a backlog, a defendant who is intent upon delaying the conviction can usually do so with a wide range of dilatory tactics.

A conviction for driving while under the influence can often be avoided altogether through plea bargaining. The charge is reduced to some lesser offense in exchange for a guilty plea. This produces a conviction, but not for the offense of driving while under the influence. This is especially likely to happen where there is a backlog of cases in the court, an overworked prosecutor, or a prosecutor who is sympathetic with the drunk driver and doesn't want him to lose his license.

There are also pre-trial or pre-conviction diversion programs operating in some courts. These programs pull the defendant out of the criminal adjudication and into an educational or treatment program before a conviction is entered. If the person completes the program, the charges are often dropped. While some aspects of such programs may be valuable, they do result in avoidance of a conviction for drunk driving, making it impossible for the department to take license action in the case. Indeed, the department may never learn of such cases!

It should be noted, of course, that there are many courts where adjudications of drunk driving charges proceed promptly and without the problems and abuses discussed above. But there are also many courts where the problems do exist.

There appears to be a need for a rapid and certain method of withdrawing the driving privilege from a person who drives a motor vehicle while under the influence of alcohol and/or drugs.

A rapid and certain method would help to get problem drinkers off the highways quickly. A rapid and certain method will also serve as a greater deterrent to drunk driving since there will be a better connection between the illegal act and its consequences for the person -- loss of the drivers license. It will also make a clear statement to all concerned that the state is willing and able to take immediate and effective action against those persons who endanger other highway users by driving while they under the influence. **The development and definition of such a rapid and certain method is the purpose of this project.**

We believe the most effective way to avoid the described delays is through license suspension or revocation before the offender appears in court. There is long-standing precedent for such an approach. The District of Columbia has been suspending and revoking the licenses of persons charged with driving while under the influence and other serious offenses, without waiting for a conviction, since 1954.

A more recent development in withdrawing the drivers licenses of persons who drive while under the influence is the "administrative per se" approach, so called because it parallels the "illegal per se" approach to the criminal offense. Under the illegal per se approach, it is a crime to drive with more than a specified alcohol concentration. (Previously, evidence of alcohol concentration only created a presumption that the person was under the influence). The administrative per se approach to license suspension is similar. The license is suspended or revoked on the basis of a department finding that the person drove a motor vehicle while having an alcohol concentration of 0.10 or more. This concept was first used by the state of Minnesota in a law adopted in 1976. Similar laws were adopted in Iowa and Oklahoma in 1982.

In 1981, West Virginia adopted a law which authorized suspension prior to a conviction on a charge of driving while under the influence of alcohol or drugs. This is not, strictly speaking, an administrative per se law because the action is not based solely on the alcohol concentration level. Delaware adopted a similar law in 1982.

It was at this point, and after analysis of those existing laws, that the first version of the Model Revocation on Administrative Determination Law (ROAD) was prepared, under sponsorship of the National Highway Traffic Safety Administration. It was published in December of 1982.

In 1983, 13 additional states adopted comparable laws. Many of these laws reflect concepts found in the original ROAD Law. Several of the state laws are very similar to the ROAD law.

The purpose of the immediate project was to review all of the existing 19 laws and to determine whether revisions should be made in the Model ROAD Law. As part of this effort, driver licensing officials in each of the 19 states with comparable laws

were asked to review the Model ROAD Law and offer their comments and suggestions for revision. The result of this project is the Second Edition of the Model ROAD Law, included in this report.

The Second Edition of the Model ROAD Law contains the following major revisions, as well as other minor revisions of wording:

1. A new section 1 defines the purpose of the Act.

2. The ROAD Law is now truly an administrative per se law in that section 2 provides for revocation only on the basis of chemical test results showing an alcohol concentration of 0.10 or more. The former ROAD law also covered driving while under the influence of alcohol as established by other evidence, and driving while under the influence of drugs or a combination of alcohol and drugs.

3. The temporary permit issued by an enforcement officer under section 5 is now valid for 15 days rather than seven, and the effective date of the revocation under section 6 is now 15 days after service of the notice of revocation.

4. The most significant revision is the addition of a new section 8 which provides for an administrative review of the revocation. This review is not a hearing, but does afford the licensee an opportunity, by presenting a written statement and other evidence, to have his side of the question considered by the department. If promptly requested, the administrative review will be completed before the revocation takes effect.

5. A full administrative hearing is still available under section 9, but it is no longer provided prior to the effective date of the revocation. Revocation is effective 15 days after the notice of revocation is served. The person can obtain administrative review within that 15 days, but a full hearing takes longer, and the request for a hearing no longer results in a stay of the revocation.

In addition to the text of the Second Edition of the Model ROAD Law, this report contains "Comments and Implementation Guidelines" for each section of the Law, summaries of the laws of 19 states, and charts which compare 30 different substantive provisions of those 19 laws and the Model ROAD Law. The report also contains a brief discussion of the interstate aspects of revocation on administrative determination. An Appendix to the report contains a paper by Prof. John Reese treating the constitutional dimensions of the problem.

Model Revocation on Administrative Determination (ROAD) Law

Text Only

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Model Revocation on Administrative Determination (ROAD) Law

Text Only

§ 1 — Purpose of this act

The purpose of this Act is the following:

(1) To provide safety for all persons using the highways of this state by quickly revoking the driving privilege of those persons who have shown themselves to be safety hazards by driving with an excessive concentration of alcohol in their bodies; and,

(2) To guard against the potential for any erroneous deprivation of the driving privilege by providing an opportunity for administrative review prior to the effective date of the revocation, and an opportunity for a full hearing as quickly as possible after the revocation becomes effective; and,

(3) Following the revocation period, to prevent the relicensing of those persons until the department is satisfied that their alcohol problem is under control and that they no longer constitute a safety hazard to other highway users.

§ 2 — Revocation on administrative determination

(a) The department shall revoke the license of any person upon its determination that the person drove or was in actual physical control of a motor vehicle while the alcohol concentration in the person's blood or breath was 0.10 or more. For purposes of this Act, alcohol concentration shall mean either grams of alcohol per 100 milliliters or blood or grams of alcohol per 210 liters of breath.

(b) The department shall make a determination of these facts on the basis of the report of a law enforcement officer required in section 3 of this Act, and this determination shall be final unless an administrative review is requested under section 8 or a hearing is held under section 9.

(c) The determination of these facts by the department is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect any revocation under this section.

§ 3 -- Report by law enforcement officers

(a) A law enforcement officer who arrests any person for a violation of (insert code reference -- see Note, p. 15) shall immediately forward to the department a sworn report of all information relevant to the enforcement action, including information which adequately identifies the arrested person, a statement of the officer's grounds for belief that the person violated (insert code reference -- see Note, p. 15), a report of the results of any chemical tests which were conducted, and a copy of the citation and complaint filed with the court.

(b) The report required by this section shall be made on forms supplied by the department or in a manner specified by regulations of the department.

§ 4 -- Notice of revocation

(a) Upon receipt of the report of the law enforcement officer, the department shall make the determination described in section 2 of this Act. If the department determines that the person is subject to license revocation, and if notice of revocation has not already been served upon the person by the enforcement officer as required in section 5, the department shall issue a notice of revocation.

(b) The notice of revocation shall be mailed to the person at the last known address shown on the department's records, and to the address provided by the enforcement officer's report if that address differs from the address of record. The notice is deemed received three days after mailing.

(c) The notice of revocation shall clearly specify the reason and statutory grounds for the revocation, the effective date of the revocation, the right of the person to request an administrative review and a hearing, the procedure for requesting an administrative review and a hearing, and the date by which a request for an administrative review must be made in order to receive a determination prior to the effective date of the revocation.

(d) If the department determines that the person is not subject to license revocation, the department shall notify the person of its determination and shall rescind any order of revocation served upon the person by the enforcement officer.

§ 5 -- Notice of revocation served by enforcement officer

(a) Whenever the chemical test results for a person who is being charged with a violation of (insert code reference -- see Note, p. 18) show an alcohol concentration of 0.10 or more, the officer, acting on behalf of the department, shall serve the notice of revocation personally on the arrested person.

(b) When the law enforcement officer serves the notice of revocation, the officer shall take possession of any drivers license issued by this state which is held by the person. When the officer takes possession of a valid drivers license issued by this state, the officer, acting on behalf of the department, shall issue a temporary permit which is valid for 15 days after its date of issuance.

(c) A copy of the completed notice of revocation form, a copy of any completed temporary permit form, and any drivers license taken into possession under this section, shall be forwarded immediately to the department by the officer.

(d) The department shall provide forms for notice of revocation and for temporary permits to law enforcement agencies.

§ 6 -- Effective date and period of revocation

(a) The license revocation shall become effective 15 days after the subject person has received the notice of revocation as provided in section 5, or is deemed to have received the notice of revocation by mail as provided in section 4.

(b) The period of license revocation under this section shall be as follows:

1. The period shall be three months if the person's driving record shows no prior alcohol or drug related enforcement contacts during the immediately preceding five years.

2. The period shall be one year if the person's driving record shows one or more prior alcohol or drug related enforcement contacts during the immediately preceding five years.

3. For purposes of this section, "alcohol or drug related enforcement contacts" shall include any revocation under this Act, any suspension or revocation entered in this or any other state for a refusal to submit to chemical testing under an implied consent law, and any conviction in this or any other state for a violation which involves driving a vehicle while having an unlawful alcohol concentration, or while under the influence of alcohol, drugs, or alcohol and drugs.

(c) Where a license is revoked under this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of (insert code reference -- see Note 1, p. 21), both the revocation under this section and the revocation under (insert code reference -- see Note 2, p. 21) shall be imposed, but the periods of revocation shall run concurrently, and the total period of revocation shall not exceed (the longer of the two revocation periods).

§ 7 -- Restoration of license

(a) The periods of revocation specified by section 6 of this Act are intended to be minimum periods of revocation for the described conduct. No license shall be restored under any circumstances and no restricted or hardship permit shall be issued during the revocation period.

(b) Following a license revocation, the department shall not issue a new license or otherwise restore the driving privilege unless and until the person presents evidence satisfactory to the department that the person's problem with alcohol use is under control, and that it will be reasonably safe to permit the person to drive a motor vehicle upon the highways. No driving privilege may be restored until all applicable reinstatement fees have been paid.

§ 8 -- Administrative review

(a) Any person who has received a notice of revocation under this Act may request an administrative review. The request may be accompanied by a sworn statement or statements and any other relevant evidence which the person wants the department to consider in reviewing the determination made pursuant to section 2 of this Act.

(b) When a request for administrative review is made, the department shall review the determination made pursuant to section 2 of this act. In the review, the department shall give consideration to any relevant sworn statement or other evidence accompanying the request for the review, and to the sworn statement of the law enforcement officer required by section 3 of this Act. If the department determines, by the preponderance of the evidence, that the person drove or was in actual physical control of a motor vehicle while having an alcohol concentration of 0.10 or more, the department shall sustain the order of revocation. If the evidence does not support such a determination, the department must rescind the order of revocation. The determination of the department upon administrative review is final unless a hearing is requested under section 9 of this Act.

(c) The department shall make a determination upon administrative review prior to the effective date of the revocation order if the request for the review is received by the department within eight days following service of the notice of revocation. Where the request for administrative review is received by the department more than eight days following service of the notice of revocation, the department shall make its determination within seven days following the receipt of the request for review.

(d) A request for administrative review does not stay the license revocation. If the department is unable to make a determination within the time limits specified in subsection (c) of this section, it shall stay the revocation pending that determination.

(e) The request for administrative review may be made by mail or in person at any office of the department. The department shall provide forms which the person may use to request an administrative review and to submit a sworn statement, but use of the forms is not required.

(f) A person may request and be granted a hearing under section 9 without first requesting administrative review under this section. Administrative review is not available after a hearing is held.

§ 9 — Hearing

(a) Any person who has received a notice of revocation may make a written request for a review of the department's determination at a hearing. The request may be made on a form available at each office of the department. If the person's drivers license has not been previously surrendered, it must be surrendered at the time the request for a hearing is made. A request for a hearing does not stay the license revocation.

(b) The hearing shall be scheduled to be held as quickly as practicable within not more than 30 days of the filing of the request for a hearing. The hearing shall be held at a place designated by the department as close as practicable to the place where the arrest occurred, unless the parties agree to a different location. The department shall provide a written notice of the time and place of the hearing to the party requesting the hearing at least 10 days prior to the scheduled hearing, unless the parties agree to waive this requirement.

(c) The presiding hearing officer shall be the commissioner or an authorized representative designated by the commissioner. The presiding hearing officer shall have authority to administer oaths and affirmations; to examine witnesses and take testimony; to receive relevant evidence; to issue subpoenas, take depositions, or cause depositions or interrogatories to be taken; to regulate the course and conduct of the hearing; and to make a final ruling on the issue.

(d) The sole issue at the hearing shall be whether by a preponderance of the evidence the person drove or was in actual physical control of a motor vehicle while having an alcohol concentration of 0.10 or more. If the presiding hearing officer finds the affirmative of this issue, the revocation order shall be sustained. If the presiding hearing officer finds the negative of the issue, the revocation order shall be rescinded.

(e) The hearing shall be recorded. The decision of the presiding hearing officer shall be rendered in writing, and a copy will be provided to the person who requested the hearing.

(f) If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the department's earlier determination shall be final.

§ 10 -- Judicial review

(a) Within 30 days of the issuance of the final determination of the department following a hearing under section 9 of this Act, a person aggrieved by the determination shall have the right to file a petition in (a court of record) in the county of (the county where the main office of the department is located) for judicial review. The filing of a petition for judicial review shall not stay the revocation order.

(b) The review shall be on the record, without taking additional testimony. If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the department's determination.

§ 11 -- Administrative procedure act

The administrative procedure act of this state [applies to the extent it is consistent with] [OR] [does not apply to] proceedings under sections 9 and 10 of this Act relating to the administrative hearing and judicial review.

§ 12 -- Definitions

The following words and phrases when used in this act shall have the meanings indicated in this section:

1. **Department.** -- The department of motor vehicles of this State.

2. **Drivers license.** -- Any license to operate a motor vehicle issued under the laws of this State.

3. **License.** -- Any drivers license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this State including:

(a) Any temporary license or instruction permit;

(b) The privilege of any person to drive a motor vehicle whether or not the person holds a valid license;

(c) Any nonresident's operating privilege as defined herein.

4. **Nonresident's operating privilege.** -- The privilege conferred upon a nonresident by the laws of this State pertaining to the operation by that person of a motor vehicle, or the use of a vehicle owned by that person, in this State.

5. **Revocation.** -- The termination by formal action of the department of a person's license or privilege to operate a motor vehicle on the highways, which terminated license or privilege shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in this act.

6. **State.** -- A state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province of Canada.

7. **Suspension.** -- The temporary withdrawal by formal action of the department of a person's license or privilege to operate a motor vehicle on the highways, which temporary withdrawal shall be for a period specifically designated by the department.

Model Revocation on Administrative Determination (ROAD) Law

With Comments and Implementation Guidelines

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Model Revocation on Administrative Determination (ROAD) Law

With Comments and Implementation Guidelines

§ 1 -- Purpose of this act

The purpose of this Act is the following:

(1) To provide safety for all persons using the highways of this state by quickly revoking the driving privilege of those persons who have shown themselves to be safety hazards by driving with an excessive concentration of alcohol in their bodies; and,

(2) To guard against the potential for any erroneous deprivation of the driving privilege by providing an opportunity for administrative review prior to the effective date of the revocation, and an opportunity for a full hearing as quickly as possible after the revocation becomes effective; and,

(3) Following the revocation period, to prevent the relicensing of those persons until the department is satisfied that their alcohol problem is under control and that they no longer constitute a safety hazard to other highway users.

Comments and Implementation Guidelines

General. The statement of purpose is important because it helps to establish the state's strong interest in promoting highway safety by quickly removing drunk drivers from the highways. The significance of the state's interest is one factor which the courts weigh in determining the validity of summary revocation procedures.

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§ 2 -- Revocation on administrative determination

(a) The department shall revoke the license of any person upon its determination that the person drove or was in actual physical control of a motor vehicle while the alcohol concentration in the person's blood or breath was 0.10 or more. For purposes of this Act, alcohol concentration shall mean either grams of alcohol per 100 milliliters or blood or grams of alcohol per 210 liters of breath.

(b) The department shall make a determination of these facts on the basis of the report of a law enforcement officer required in section 3 of this Act, and this determination shall be final unless an administrative review is requested under section 8 or a hearing is held under section 9.

(c) The determination of these facts by the department is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect any revocation under this section.

Comments and Implementation Guidelines

General. This section provides the basis of Revocation On Administrative Determination (ROAD). Instead of waiting for the criminal adjudication process to result in a conviction, the department makes its own independent determination of the same facts, and revokes if it appears to be warranted.

ROAD provides for revocation rather than suspension because at the conclusion of a period of license revocation, the license is not automatically returned. Instead, the person may apply for a new license which may be granted if the person is found to be qualified. See the definitions of "revocation" and "suspension" in section 12, and the provision on license restoration in section 7. Whenever a license is withdrawn due to an offense relating to the use of alcohol or drugs, it is important that the department determine that it will be reasonably safe to allow the person to drive before it issues a new license.

Alcohol concentration. This definition in subsection (a) is taken without revision from UVC § 11-902.1 (a) 5 (Supp. 1979). The definition is vital. It must not be omitted from the law. It should not be modified except with the assistance of competent experts in the field of chemical testing.

The definition allows the chemical test results to be expressed directly as concentration in either the blood or the breath. Many older chemical test laws allow test results to be expressed only in terms of the blood alcohol concentration (BAC). Where breath tests are used under those laws, the test results must be converted to be expressed in terms of blood alcohol levels. No such conversion is necessary under the ROAD law.

It is especially important to the ROAD concept that breath testing be utilized, and that the accuracy and speed of the results should be maximized. This will enable the law enforcement officer, in appropriate cases, to give the revocation notice and take possession of the drivers license while the person is still in custody. This is important to the success of the ROAD approach.

Subsection (a). Revocation is mandatory under this section upon a finding that the person drove a motor vehicle while having an alcohol concentration of 0.10 or more.

Subsection (b). ROAD allows the department to base the revocation on the police officer's report alone, if an administrative review or hearing is not requested.

Subsection (c). This subsection makes it clear that the revocation under ROAD is an administrative action which is completely independent of the adjudication of the criminal charges. An acquittal in criminal court will have no effect upon the revocation.

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§ 3 — Report by law enforcement officers

(a) A law enforcement officer who arrests any person for a violation of (insert code reference -- see Note below) shall immediately forward to the department a sworn report of all information relevant to the enforcement action, including information which adequately identifies the arrested person, a statement of the officer's grounds for belief that the person violated (insert code reference -- see Note below), a report of the results of any chemical tests which were conducted, and a copy of the citation and complaint filed with the court.

(b) The report required by this section shall be made on forms supplied by the department or in a manner specified by regulations of the department.

Comments and Implementation Guidelines

Note. At the two points indicated in subsection (a), reference to the state code section which prohibits driving while having an unlawful alcohol concentration should be inserted.

General. Under the current laws of most states, the department receives records of convictions and of implied consent refusals. The department would be unaware of most drunk driving enforcement contacts until a conviction is reported. This ROAD section provides the mechanism for getting information to the department immediately concerning all arrests for driving with an unlawful alcohol concentration.

Subsection (a). The subsection requires the officer to forward the kind of information which the department will need to determine whether to revoke the license.

The officer's report must be sworn. This is consistent with the practice in most of the comparable state laws, and in most state implied consent laws. Some states require that the report be "certified." Such certification might be accomplished by affixing immediately above the signature on the report a statement that any false statement in the report is punishable as a criminal offense. This statement, together with the signature of the officer, would constitute certification.

Subsection (b). In developing the forms and/or regulations required by this section, the department should consider encouraging the utilization of copies of documents which must be prepared by the enforcement officer for other purposes, whenever feasible. The forms and regulations should also provide for the combination of this report with the officer's report of a refusal to submit to chemical testing, in appropriate cases.

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§ 4 -- Notice of revocation

(a) Upon receipt of the report of the law enforcement officer, the department shall make the determination described in section 2 of this Act. If the department determines that the person is subject to license revocation, and if notice of revocation has not already been served upon the person by the enforcement officer as required in section 5, the department shall issue a notice of revocation.

(b) The notice of revocation shall be mailed to the person at the last known address shown on the department's records, and to the address provided by the enforcement officer's report if that address differs from the address of record. The notice is deemed received three days after mailing.

(c) The notice of revocation shall clearly specify the reason and statutory grounds for the revocation, the effective date of the revocation, the right of the person to request an administrative review and a hearing, the procedure for requesting an administrative review and a hearing, and the date by which a request for an administrative review must be made in order to receive a determination prior to the effective date of the revocation.

(d) If the department determines that the person is not subject to license revocation, the department shall notify the person of its determination and shall rescind any order of revocation served upon the person by the enforcement officer.

Comments and Implementation Guidelines

General. Sections 4 and 5 of ROAD provide two methods for serving the notice of revocation. In most cases, the notice will be served personally by the enforcement officer. Where for any reason that is not done, section 4 provides that the department will serve the notice by mail. Section 4 also specifies the minimum content of the notice.

Subsection (a). If the department determines that a license should be revoked, and if the notice has not already been given by the enforcement officer, the department issues the notice.

Subsection (b). There are several important elements here. First, the department must send the notice to the address shown on the department's records. The licensee has a legal obligation to keep the department apprised of a current address, and the department is entitled to treat that as the address to be used to give a legal notice. Nevertheless, the address provided in the officer's report is likely, as a practical matter, to be more current. If the two addresses differ, ROAD requires mailing a notice to both. ROAD does not specify the type of mail to be used, leaving that to the discretion of the department.

ROAD creates a presumption that the notice which is mailed is received by the person three days after it is mailed. This presumption allows the process to continue, even where there is no evidence of actual notification. The notice of revocation should specify the effective date of the revocation, which would be 18 days after the notice is mailed -- three days for the mail, and 15 days after the notice is presumed to be received.

Court rulings vary from state to state on the question of the necessity of actual notice. Court rulings in your state should be carefully considered in developing implementation procedures for this section. For example, if a revocation will be without effect in your state unless actual notice is given, the department should use a form of mail which will supply some evidence of notification such as certified mail with return receipt. The presumption that a mailed notice is received after three days will not hold up if your state is one which requires actual notice. It should be a part of your law, nevertheless, because it allows the department to specify the revocation effective date in the notice, but it should not be relied upon for more than that. The implementation procedures should provide for continued attempts to give the notice through alternative methods until the department has evidence of actual notice.

The best way to deal with the problem of actual notice is to maximize the use of notices issued by enforcement officers under section 5. This would be done by using chemical test procedures which provide immediate results. If service of the notice must be made under section 4, some problems are probably unavoidable, especially in those states which require actual notice.

Subsection (c). This subsection specifies the minimum content of the notice of revocation. It applies to notices served under either section 4 or section 5.

The notice of revocation should include all of the following information: clear notice that the person's drivers license and privilege to drive in this state is revoked; that the revocation is effective on a specified date; the reason for the revocation, including the time and place of the arrest, and the offense charged; that the person has the right to an administrative review and/or a hearing to contest the department's determination; that a timely request of administrative review will result in a review of the revocation before it becomes

effective, but that neither the request for an administrative review nor a request for a hearing will result in a delay of the effective date of the revocation; that the person is required to surrender the license card to the department immediately, and will receive a temporary license valid until the effective date of the revocation; the address of the department office where the license may be surrendered and a request for an administrative review or a hearing may be filed; that the period of revocation is three months for a first offender, and one year for others; and that following the period of revocation the person may make application for a new license, if qualified at that time, and if the person's alcohol problem is under control.

Subsection (d). This subsection specifies that if the department determines that revocation is not warranted, it must notify the licensee.

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§ 5 — Notice of revocation served by enforcement officer

(a) Whenever the chemical test results for a person who is being charged with a violation of (insert code reference -- see Note below) show an alcohol concentration of 0.10 or more, the officer, acting on behalf of the department, shall serve the notice of revocation personally on the arrested person.

(b) When the law enforcement officer serves the notice of revocation, the officer shall take possession of any drivers license issued by this state which is held by the person. When the officer takes possession of a valid drivers license issued by this state, the officer, acting on behalf of the department, shall issue a temporary permit which is valid for 15 days after its date of issuance.

(c) A copy of the completed notice of revocation form, a copy of any completed temporary permit form, and any drivers license taken into possession under this section, shall be forwarded immediately to the department by the officer.

(d) The department shall provide forms for notice of revocation and for temporary permits to law enforcement agencies.

Comments and Implementation Guidelines

Note. At the point indicated in subsection (a), reference to the state code section which prohibits driving while having an unlawful alcohol concentration should be inserted.

General. We anticipate that most of the notices of revocation would be served under the provisions of this section.

Subsection (a). This subsection establishes very clear criteria for certain action by the enforcement officer. When the officer has obtained chemical test results showing an alcohol concentration of 0.10 or more, the officer must serve the notice of revocation on behalf of the department. If the test results are available immediately, the officer will be able to serve the notice while the person is still in custody. If the results are available later, the officer may be able to serve the notice when the person appears in court for proceedings relating to the criminal prosecution.

Subsection (b). At the same time the revocation notice is served, the officer takes possession of the person's drivers license. This is one of the most important aspects of the law. Although it is certainly possible to revoke a license without recovering possession of the drivers license card, such a revocation will be more difficult to enforce. Accordingly, an attempt is generally made to secure possession of a revoked drivers license. This can be a very difficult and time consuming process, however. This ROAD subsection should alleviate much of the difficulty in securing possession of revoked licenses.

Under the ROAD provision, only licenses issued by the state where the arrest is made are picked up. A state cannot revoke the license issued by another state; it can only revoke the nonresident's operating privilege in the state.

The most serious problem involved with taking possession of the drivers license card while the license remains valid is that it leaves the person without the most effective means of driver identification. The temporary permit which is substituted for the drivers license will be significantly less effective in identifying the licensee; it will have much less recognition as a valid drivers license; and it will be much more susceptible to counterfeiting and other kinds of fraudulent use. We have included this concept in ROAD because of the significant advantage of securing the drivers license at the time of arrest, and because the duration of the temporary permit should be very brief. Nevertheless, we would encourage further study to develop an alternative means of securing possession of revoked licenses. One concept which should be studied involves stamping or punching the drivers license to indicate that it is void after a particular date, and then returning it to the licensee. The District of Columbia law incorporates a similar concept, although the punch which is used does not place a date on the license.

The temporary permit which is issued is valid for 15 days. This is consistent with ROAD section 6 which provides that the revocation is effective 15 days after the notice is served.

Subsection (c). This specifies only that copies of all the documents must be forwarded to the department either at the same time as the initial report, or later after the notice is served.

Subsection (d). The department must provide forms for the notice of revocation and the temporary permit to appropriate law enforcement agencies.

The forms should be so designed that when completed by the enforcement officer, the notice of revocation form will meet the requirements of section 4, and the temporary permit will contain all of the relevant restrictions and descriptive information contained on the drivers license.

Several states are using a single form for the notice of revocation and temporary permit. While this may be a very convenient form, it results in a temporary permit which has few attributes of a drivers license. We recommend that the temporary permit form be designed to be as effective as possible in identifying the licensee and making the connection between person and driving record, in providing recognizable evidence of a driving privilege issued by this state, and in preventing counterfeit and fraudulent use.

* * *

§ 6 -- Effective date and period of revocation

(a) The license revocation shall become effective 15 days after the subject person has received the notice of revocation as provided in section 5, or is deemed to have received the notice of revocation by mail as provided in section 4.

(b) The period of license revocation under this section shall be as follows:

1. The period shall be three months if the person's driving record shows no prior alcohol or drug related enforcement contacts during the immediately preceding five years.

2. The period shall be one year if the person's driving record shows one or more prior alcohol or drug related enforcement contacts during the immediately preceding five years.

3. For purposes of this section, "alcohol or drug related enforcement contacts" shall include any revocation under this Act, any suspension or revocation entered in this or any other state for a refusal to submit to chemical testing under an implied consent law, and any conviction in this or any other state for a violation which involves driving a vehicle while having an unlawful alcohol concentration, or while under the influence of alcohol, drugs, or alcohol and drugs.

(c) Where a license is revoked under this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of (insert code reference -- see Note 1 below), both the revocation under this section and the revocation under (insert code reference -- see Note 2 below) shall be imposed, but the periods of revocation shall run concurrently, and the total period of revocation shall not exceed (the longer of the two revocation periods).

Comments and Implementation Guidelines

Note 1. In the space indicated in subsection (c), a reference to the state code section which prohibits driving with an unlawful alcohol concentration should be inserted.

Note 2. In the second indicated space in subsection (c), a reference to the state code section providing for license suspension or revocation following a conviction for driving with an unlawful alcohol concentration should be inserted.

Subsection (a). The subsection specifies that the period of revocation begins 15 days after the revocation notice is received.

Subsection (b). The subsection specifies the period of ROAD revocations. For a first offender, the license is revoked for a period of three months.

For the person who is a repeat offender, the revocation period is one year. A person is a repeat offender if the record shows one or more alcohol or drug related enforcement contacts within the past five years. Prior contacts would include any prior ROAD revocation, any conviction for driving while under the influence in this state or another, and any suspension or revocation for refusing a chemical test in this state or another. In order to implement this provision, department driver records would have to be maintained for the period necessary to determine repeat offenders -- we have recommended five years. The department should also give effect to records generated in other states, incorporating them into records maintained by the department. UVC § 6-106 (c) (1968) provides the legal foundation for doing so, and should be adopted if the state has no comparable provision now.

It is important to consider how the ROAD revocation periods compare with other suspensions and revocations related to drunk driving. If the ROAD revocation is longer than an implied consent revocation, for example, the ROAD law may serve as an inducement to test refusals. That would be very undesirable.

Subsection (c). This subsection deals with the relationship between the ROAD revocation and the conviction revocation based upon the same offense. Most states have a provision comparable to UVC § 6-205 (2) (Supp. 1979) requiring revocation (or suspension) on the basis of a conviction for driving while under the influence. (If your state law provides for suspension rather than revocation, the references in this subsection should be revised accordingly). Subsection (c) specifies that both of the revocation periods are to be imposed, but that they run concurrently, and the total period of revocation imposed is equivalent to the longer of the two periods. Thus, assuming that the period of revocation under ROAD is three months, and the period of revocation based upon a conviction is six months, the maximum period of revocation based upon the same offense would be six months. This would be true regardless of when or in what order the two revocations are imposed. The time during which the license is revoked under the earlier revocation is credited to the later revocation when it becomes effective.

* * *

§ 7 -- Restoration of license

(a) The periods of revocation specified by section 6 of this Act are intended to be minimum periods of revocation for the described conduct. No license shall be restored under any circumstances and no restricted or hardship permit shall be issued during the revocation period.

(b) Following a license revocation, the department shall not issue a new license or otherwise restore the driving privilege unless and until the person presents evidence satisfactory to the department that the person's problem with alcohol use is under control, and that it will be reasonably safe to permit the person to drive a motor vehicle upon the highways. No driving privilege may be restored until all applicable reinstatement fees have been paid.

Comments and Implementation Guidelines

General. This section specifies the conditions for restoration of the driving privilege revoked under ROAD. It makes it clear that no privilege may be restored prior to expiration of the revocation period.

Subsection (a). The basic goal of ROAD is to revoke the license quickly, and for an adequate period of time to impress the licensee with the seriousness of the offense and the resolution of the state to take firm, immediate, responsive action. We believe that the issuance of a limited privilege on the basis of hardship considerations at a time when the license would otherwise be revoked would seriously undermine that goal. The three-month period of revocation for a first offender under ROAD is a relatively short license deprivation, given the seriousness of the offense. Many states specify revocation of six months to one year for this offense. This relatively short revocation period has been selected in the belief that it is better to completely deprive the person of the driving privilege for a short period than to restrict that privilege to necessary or occupational driving for a longer period. We urge the states to treat this three-month revocation period as a minimum period of total withdrawal of the driving privilege.

If the state decides to make available a limited license at some point during the revocation period, optimally, such a limited license would NOT be based upon hardship considerations. It will constitute a hardship for anyone to have the driving privilege revoked, but that's not a good reason to restore the license. A better basis for restoring a limited driving privilege would be some evidence that the person has made progress in recognizing and correcting the alcohol or drug use problem which led to the offense. Many states are now requiring satisfactory completion of a prescribed treatment program as a condition to issuance of a limited license, rather than just returning the privilege to anyone who can show a hardship.

Subsection (b). This provision makes it clear that at the conclusion of <u>any</u> license revocation, the license is not automatically returned. Instead, the person must make application for a new license. Before issuing a new license, the department must be satisfied that it will be safe to permit the person to drive. This subsection places the burden on the person whose license has been revoked to provide evidence that the alcohol problem is under control and that it will be safe to permit the person to drive. The department should establish regulatory standards for restoring driving privileges in such cases.

The subsection also specifies that all applicable reinstatement fees must be paid before a license may be restored. The cost of administration of this program should be recovered from the drivers who make it necessary.

* * *

§ 8 -- Administrative review

(a) Any person who has received a notice of revocation under this Act may request an administrative review. The request may be accompanied by a sworn statement or statements and any other relevant evidence which the person wants the department to consider in reviewing the determination made pursuant to section 2 of this Act.

(b) When a request for administrative review is made, the department shall review the determination made pursuant to section 2 of this act. In the review, the department shall give consideration to any relevant sworn statement or other evidence accompanying the request for the review, and to the sworn statement of the law enforcement officer required by section 3 of this Act. If the department determines, by the preponderance of the evidence, that the person drove or was in actual physical control of a motor vehicle while having an alcohol concentration of 0.10 or more, the department shall sustain the order of revocation. If the evidence does not support such a determination, the department must rescind the order of revocation. The determination of the department upon administrative review is final unless a hearing is requested under section 9 of this Act.

(c) The department shall make a determination upon administrative review prior to the effective date of the revocation order if the request for the review is received by the department within eight days following service of the notice of revocation. Where the request for administrative review is received by the department more than eight days following service of the notice of revocation, the department shall make its determination within seven days following the receipt of the request for review.

(d) A request for administrative review does not stay the license revocation. If the department is unable to make a determination within the time limits specified in subsection (c) of this section, it shall stay the revocation pending that determination.

(e) The request for administrative review may be made by mail or in person at any office of the department. The department shall provide forms which the person may use to request an administrative review and to submit a sworn statement, but use of the forms is not required.

(f) A person may request and be granted a hearing under section 9 without first requesting administrative review under this section. Administrative review is not available after a hearing is held.

Comments and Implementation Guidelines

General. ROAD specifies a two-step administrative review and hearing process. This section describes the first step, an administrative review. Section 9 describes the second step, a full administrative hearing.

The "administrative review" described in this section is not a hearing. Rather, it is a review by the department of papers submitted by the officer and by the person whose license is subject to revocation. It affords the person a limited opportunity to state his side of the story, and to call attention to any obvious errors in the department's determination of the facts. If promptly requested, this review can be provided before the effective date of the revocation. The purpose of the review is to provide sufficient due process to prevent clearly erroneous license deprivations which could cause irreparable injury to the licensee.

Many of the existing laws provide for a stay of the suspension or revocation pending a full administrative hearing. Experience indicates that many of those states are unable to provide such hearings until 45 to 60 days following the arrest, or even longer. The volume of hearings is one factor in this delay. Experience also indicates that many drivers are requesting hearings only because of the stay of revocation which is afforded. This greatly inflates the volume of hearings, and causes further delays. The result of such factors is obstruction of one of the most basic goals of revocation on administrative determination -- revoking the license and removing the driver from the highways quickly.

Hence, this revised version of the ROAD law provides for license revocation effective before a full hearing is provided. The revocation is effective 15 days after the person is served with the notice, generally at the time of arrest, and no stay is provided upon request for a hearing. The administrative review is intended to fill the due process gap pending the full hearing.

Several recent U.S. Supreme Court cases on the subject, especially Mackey v. Montrym, 433 U.S. 1 (1978), suggest that a law providing for immediate suspension or revocation without a prior hearing would be constitutional. Society has an important interest in getting dangerous drunk drivers off the highways immediately, and this would justify a summary suspension, especially if a post-suspension hearing is provided promptly. For an extremely well-documented and reasoned report which supports this conclusion, see J. Reese, "Summary Suspension of Driver Licenses of Drunken Drivers--Constitutional Dimensions," U.S. Department of Transportation (Nov. 1982), reprinted as an Appendix, infra.

The idea of a prompt administrative review followed by a later full hearing is drawn, with some revisions, from the Minnesota law. That law was recently upheld by the Minnesota Supreme Court against a claim that it violated due process of law. See Meddan v. Dirkswager, 336 N.W. 2d 54 (Minn. 1983).

Subsection (a). A person who has received a notice of license revocation under this Act may request an administrative review at any time prior to the date of an administrative hearing, and may accompany the request with a sworn statement or statements setting forth any facts he wants the department to consider. The person may also send other evidence (pictures, documents, ect.) in support of his case.

Subsection (b). The department is required to review its determination, giving consideration to the statements and evidence submitted by the person, and to the officer's sworn report. If the department determines on the basis of this review of the evidence in the record that the person did drive with an unlawful alcohol concentration, the revocation order is sustained; otherwise, it must be rescinded.

The review is not a hearing. The person does not appear before the department official who makes the determination. No witnesses are called. It is a paper review. It is just like the initial determination except that the record now contains papers submitted by the person whose license is being revoked.

Subsection (c). This subsection specifies the time restrictions applicable to administrative review. If the request for review is received by the department within eight days following service of the order of revocation, the department must complete the review before the revocation becomes effective. That gives the department eight days to receive the paper work from the police officer and any papers submitted by the licensee. Following that, the department has seven days to make the review and notify the licensee regarding its determination.

If the request is received more than eight days following service of the revocation notice, the department must complete the review within seven days after the request is received. In that case, the review will not necessarily be completed before the revocation becomes effective.

Subsection (d). The revocation becomes effective 15 days after the notice of revocation is served, regardless of whether or not an administrative review is requested. The only situation which results in a stay of the revocation under ROAD is a failure of the department to complete the review within the times specified in subsection (c). In that case, the revocation would be stayed until the review is completed.

Subsection (e). This subsection specifies how administrative review may be requested.

Subsection (f). This subsection makes it clear that a person need not request an administrative review first in order to request a full hearing. The administrative review step can be omitted, at the option of the person. However, administrative review may not be requested after a hearing has been held.

§ 9 -- Hearing

(a) Any person who has received a notice of revocation may make a written request for a review of the department's determination at a hearing. The request may be made on a form available at each office of the department. If the person's drivers license has not been previously surrendered, it must be surrendered at the time the request for a hearing is made. A request for a hearing does not stay the license revocation.

(b) The hearing shall be scheduled to be held as quickly as practicable within not more than 30 days of the filing of the request for a hearing. The hearing shall be held at a place designated by the department as close as practicable to the place where the arrest occurred, unless the parties agree to a different location. The department shall provide a written notice of the time and place of the hearing to the party requesting the hearing at least 10 days prior to the scheduled hearing, unless the parties agree to waive this requirement.

(c) The presiding hearing officer shall be the commissioner or an authorized representative designated by the commissioner. The presiding hearing officer shall have authority to administer oaths and affirmations; to examine witnesses and take testimony; to receive relevant evidence; to issue subpoenas, take depositions, or cause depositions or interrogatories to be taken; to regulate the course and conduct of the hearing; and to make a final ruling on the issue.

(d) The sole issue at the hearing shall be whether by a preponderance of the evidence the person drove or was in actual physical control of a motor vehicle while having an alcohol concentration of 0.10 or more. If the presiding hearing officer finds the affirmative of this issue, the revocation order shall be sustained. If the presiding hearing officer finds the negative of the issue, the revocation order shall be rescinded.

(e) The hearing shall be recorded. The decision of the presiding hearing officer shall be rendered in writing, and a copy will be provided to the person who requested the hearing.

(f) If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the department's earlier determination shall be final.

Comments and Implementation Guidelines

General. This section contains substantive and procedural provisions relating to the hearing.

Subsection (a). The request for a hearing must be in writing and may be made on a form supplied by the department. When the person submits the hearing request, an opportunity is provided to collect any license card not yet surrendered.

Subsection (b). The hearing should be held as quickly as possible, since the person has lost the driving privilege without having benefit of full due process.

It is necessary to provide adequate notice to the parties as to the time and place of the hearing. This must be provided sufficiently ahead of time to permit the person to prepare for the hearing. Hence, the ROAD law specifies a ten-day notice requirement. The parties may agree to waive the ten-day requirement, however, and this provision should be utilized as much as possible. Any such waiver agreement should be in writing.

The hearing is generally held at a place designated by the department as close as practicable to the place where the arrest occurred. The ROAD law formerly specified that it would be held in the county where the arrest occurred, but many departments use a regional rather than county structure and may not have an office in some remote counties.

The reason for holding the hearing close to the place of arrest is that this location is likely to be most convenient for any witnesses, especially for the arresting law enforcement officer.

The parties may agree to hold the hearing in a different location. One possibility here is that such an agreement could also cover related matters. Thus, the department might agree to hold the hearing in the offender's county of residence, provided that the offender will not object to witnesses from the county of arrest giving their testimony by telephone. The presiding hearing officer may have authority under subsection (c) to take testimony in that manner regardless of objections, but an agreement would resolve any problem. The use of telephone testimony in administrative hearings is becoming more common. It should be encouraged because it is a time-efficient manner for the police officers and other witnesses to testify.

Subsection (c). These are fairly standard powers given to a hearing officer in an administrative hearing of the type contemplated here. Note that the hearing officer is specifically authorized to make the final ruling. There is no need for the commissioner to make the final decision. There is no departmental discretion being exercised. The task of the hearing officer is strictly fact finding. The action of the department is mandatory, based upon the facts found to exist.

Subsection (d). The issue before the hearing officer is exactly the same issue which the department is required to determine under section 2. It is essentially the same determination which is made in the criminal court, although in the administrative hearing the standard of proof (preponderance of evidence) differs, and a less formal procedure prevails.

Subsection (e). A record of all evidence, testimonial and documentary, must be established at the hearing. Judicial review under section 10 is based solely on the record.

Subsection (f). If the person fails to appear at the hearing without any just excuse, the matter is treated as if the right to a hearing had been waived.

* * *

§ 10 -- Judicial review

(a) Within 30 days of the issuance of the final determination of the department following a hearing under section 9 of this Act, a person aggrieved by the determination shall have the right to file a petition in (a court of record) in the county of (the county where the main office of the department is located) for judicial review. The filing of a petition for judicial review shall not stay the revocation order.

(b) The review shall be on the record, without taking additional testimony. If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the department's determination.

Comments and Implementation Guidelines

General. This section specifies the substantive and procedural requirements relative to judicial review of the administrative determination following a hearing. Note that the person must exhaust the administrative hearing remedy before judicial review is available.

Subsection (a). Venue for judicial review is shifted to the county where the main office of the department is located. This is for the convenience of the department's attorneys. The petition for judicial review must be filed within 30 days of the final determination by the department. Such a petition does not stay the revocation order.

Subsection (b). The review is on the record established by the department at the hearing. The law does not permit the court to hold a new hearing or to redetermine the facts. The court's review is strictly limited to the grounds for reversing the department which are listed in this subsection.

* * *

§ 11 -- Administrative procedure act

The administrative procedure act of this state [applies to the extent it is consistent with] [OR] [does not apply to] proceedings under sections 9 and 10 of this Act relating to the administrative hearing and judicial review.

Comments and Implementation Guidelines

General. Here the state should select one of the two options. Many of the state administrative procedure acts are full of complex provisions which have little relevancy to the type of hearing contemplated by this Act. The same is true as to the provisions regarding judicial review. Sections 9 and 10 of ROAD provide the essential legal framework for the kind of hearing and judicial review which is appropriate for the license revocations contemplated by the Act. Each state needs to assess its own APA to determine whether its provisions should also apply to the administrative actions taken under this Act.

* * *

§ 12 -- Definitions

The following words and phrases when used in this act shall have the meanings indicated in this section:

1. Department. -- The department of motor vehicles of this State.

2. Drivers license. -- Any license to operate a motor vehicle issued under the laws of this State.

3. **License.** -- Any drivers license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this State including:

(a) Any temporary license or instruction permit;

(b) The privilege of any person to drive a motor vehicle whether or not the person holds a valid license;

(c) Any nonresident's operating privilege as defined herein.

4. **Nonresident's operating privilege.** -- The privilege conferred upon a nonresident by the laws of this State pertaining to the operation by that person of a motor vehicle, or the use of a vehicle owned by that person, in this State.

5. **Revocation.** -- The termination by formal action of the department of a person's license or privilege to operate a motor vehicle on the highways, which terminated license or privilege shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in this act.

6. **State.** -- A state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province of Canada.

7. **Suspension.** -- The temporary withdrawal by formal action of the department of a person's license or privilege to operate a motor vehicle on the highways, which temporary withdrawal shall be for a period specifically designated by the department.

Comments and Implementation Guidelines

General. The definitions in this section are based on the driver licensing definitions in the Uniform Vehicle Code. They are basic terms which are already defined in the driver licensing laws of many states. They should be a part of the legal context into which the ROAD law fits. If they are not part of the overall driver licensing law, they should be specifically adopted as part of this Act.

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SUMMARY OF STATE LAWS

Revocation on Administrative Determination (ROAD)

This portion of the report summarizes the laws of the following 19 states which provide for revocation or suspension on the basis of an administrative determination that the person drove a motor vehicle while having an unlawful alcohol concentration or while otherwise under the influence:

ALASKA*

Overview. The law provides for mandatory revocation (90 days for a first offender) based upon the officer's sworn report of test results showing an alcohol concentration of 0.10. The revocation is independent of the disposition of criminal charges. Immediate notice of the department's intention to revoke is given by the officer, who seizes the person's drivers license and issues a temporary license valid for seven days. Revocation is effective after seven days unless a hearing is requested.

Action by the Enforcement Officer. Where a chemical test administered to a person driving a motor vehicle shows an alcohol concentration of 0.10 or more, the officer must read and deliver a copy of a notice to the person specifying the following:

1. That the department intends to revoke the license;

2. That the person has a right to administrative review;

3. That the notice itself is a temporary license, valid for seven days; and,

4. That the revocation is effective upon expiration of the temporary license, unless the person requests an administrative review within seven days.

The officer must then seize the person's drivers license, if it is in his or her possession. The license must be forwarded to the department along with a sworn statement of the circumstances under which it was seized.

Action by the Department. The department must revoke the drivers license of a person upon receipt of a sworn statement from an enforcement officer showing the following:

1. That a chemical test taken within four hours of the alleged offense found an alcohol concentration of 0.10 percent or more by weight of alcohol in the blood, or 100 milligrams or more of alcohol per 100 milliliters of blood, or 0.10 grams of more of alcohol per 210 liters of breath;

2. That the required notice (described above) was given to the person; and,

3. A statement of the circumstances surrounding the arrest, and the grounds for belief that the person was driving a motor vehicle while intoxicated.

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* Alaska 1983 Laws, ch. 77 § 3 (H.B. 6), Commerce Clearing House, Advance Session Laws Reports, p. 135, 136-41. The law was adopted July 19, 1983.

The revocation period is 90 days on a first offense, one year on a second offense, and ten years on a third or subsequent offense. Any conviction for driving while under the influence or for refusing an implied consent test in Alaska or in any other state with substantially similar laws within the preceding ten years is considered a prior offense.

Hearing. Administrative review (hearing) must be requested within seven days of receipt of the notice of intention to revoke or the right to review is waived. The department may waive this requirement in cases of excusable failure. The person must surrender his or her license upon requesting review if not previously surrendered. The department must issue a temporary license, valid until the date of the hearing. For good cause, the hearing may be delayed, and the temporary license extended to cover the delay.

The hearing is generally held in the office of the department nearest the residence of the person. The decision must be based upon a preponderance of the evidence, and is limited to the following issues:

1. Whether the arresting officer had reasonable grounds to believe the person was driving a motor vehicle while intoxicated; and,

2. Whether the chemical test found alcohol concentration of 0.10 or more.

The decision of the hearing officer may be based upon the sworn report of the officer. The officer is not required to be present at the hearing unless requested by the person or by the hearing officer. If during the hearing it becomes apparent that the testimony of the officer is needed to resolve a disputed issue of fact, the hearing may be continued to allow the officer to attend.

Judicial review upon the record, without taking additional testimony, is available if requested within 30 days of the final determination of the department. The court may reverse the department only for misinterpretation of the law, action which is arbitrary and capricious, or action which is unsupported by the evidence. Petition for review does not automatically stay the revocation, but a stay may be granted by the court for good cause.

Miscellaneous. In the case of a first offense only, the hearing officer may grant a limited driving privilege during the final 60 days of the revocation period upon findings that the person's ability to earn a livelihood would be severely impaired and a limitation can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public.

COLORADO*

Overview. The law provides for mandatory revocation (one year) upon determination by the department that the person drove a vehicle in the state with an alcohol concentration of 0.15 or more. The determination is based upon the officer's sworn report, or upon evidence presented at hearing, if a hearing is held. The revocation is independent of the disposition of criminal charges. Immediate notice of revocation is given by the officer if test results are available while the person remains in custody. The officer also takes possession of any Colorado license held by the person, and issues a temporary license valid for seven days. Revocation is effective after seven days unless a hearing is requested. The Colorado law differs from the Model ROAD Law as follows:

1. It uses 0.15 alcohol concentration rather than 0.10;

2. It does not allow a departmental determination that the person drove while under the influence of alcohol based upon evidence other than a chemical test, or that the person drove while under the influence of a drug, combination of drugs, or combination of alcohol and a drug or drugs.

3. It specifies a revocation period of one year rather than three months for a first offense and one year for a subsequent offense;

4. It requires the hearing to be held within 60 days of request rather than within 20 days, and requires 20 days notice to the parties rather than 10.

In other respects, the Colorado law is in near-verbatim conformity with the first edition of the Model ROAD Law.

Action by the Enforcement Officer. When an officer arrests a person for driving with an alcohol concentration of 0.15 or more, the officer must forward to the department a verified report of all information relevant to the enforcement action, including the following:

1. Information which identifies the arrested person;

2. A statement of the officer's grounds for believing the person was driving with an unlawful alcohol concentration;

3. A report of the results of any chemical tests made; and,

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* Colorado 1983 Laws, H.B. 1287 § 9, Commerce Clearing House, Advance Session Laws Reports, p. 571, 584-90. The law was adopted May 23, 1983.

4. A copy of any citation and complaint filed with the court.

If chemical test results showing alcohol concentration of 0.15 or more are available while the person is still in custody, the officer must serve notice of revocation on the person, and take possession of any Colorado license held by the person. If the license is valid, the officer must issue a temporary permit valid for seven days. The seized license is forwarded to the department along with the officer's report.

Action by the Department. If the department determines, on the basis of the officer's report, that the person drove a vehicle with an alcohol concentration of 0.15 or more grams per hundred milliliters of blood or per two hundred ten liters of breath at the time of the alleged offense or within one hour thereafter, the department must revoke the license for one year. Notice of revocation is served by mail if personal service has not already been made. Revocation is effective seven days after service of the notice.

Hearing. A hearing must be requested within seven days of receipt of the revocation notice or the right to a hearing is waived. The department may waive this requirement in cases of excusable failure. The person must surrender his or her license upon requesting review, if not previously surrendered. The department must issue a temporary license, valid until the date of the hearing, but the stay of revocation may not be extended due to a delay in the hearing requested by the licensee. The hearing must be scheduled as soon as possible, not later than 60 days after the hearing request. The hearing is held in the office of the department nearest the residence of the person requesting the hearing, unless the parties agree to another location. The sole issue is whether, by a preponderance of the evidence, the person drove a vehicle in the state with an alcohol concentration of 0.15 or more. The hearing must be recorded and the decision rendered in writing.

Judicial review upon the record, without taking additional testimony, is available if requested within 30 days of the final determination by the department. The court may reverse the department only for exceeding statutory or constitutional authority, misinterpreting the law, acting in an arbitrary and capricious manner, or making a determination which is unsupported by the evidence. A petition for judicial review does not automatically stay the revocation, but a stay may be granted by the court for good cause.

Miscellaneous. No restricted license is available during the one-year revocation period. After expiration of the period, the department may issue a new license only after it is satisfied, after an investigation of the character, habits, and driving ability of the person, that it will be safe to grant the driving privilege.

DELAWARE*

Overview. The law provides for mandatory revocation (three months for a first offender) based upon certification by the officer that there was probable cause to believe the offender was driving while under the influence, that a chemical test was conducted, and that the offender was arrested for that offense either before or after the test. The revocation is not initially based upon the test results, but at the hearing stage a blood alcohol concentration of 0.10 or more is "conclusive evidence" of a violation. The revocation can be based upon a violation involving the influence of drugs as well as alcohol. The revocation is independent of the disposition of the criminal charges. Immediate notice of revocation is given by the arresting officer, who takes the Delaware license and issues a temporary permit valid for 15 days. Revocation is effective after 15 days unless a hearing is requested.

Action by the Enforcement Officer. Where an offender is arrested for an offense involving driving while under the influence, the officer is required to certify the following to the department:

1. That there was probable cause to believe the offender was driving while under the influence, in violation of law; and

2. That the offender was arrested and charged with a violation of a law which prohibits driving while under the influence as one of its elements.

On behalf of the department, the officer must also serve notice of revocation on the offender, take possession of the Delaware license of the offender, and issue a temporary license valid for 15 days, with provision for an additional period of validity if the offender requests a hearing in writing within the 15-day period. The officer must forward the license to the department along with the certification described above. The officer's actions are not necessarily based upon the results of the chemical test. If an arrest is made, the officer must make the certification to the department.

Action by the Department. The law provides that upon certification of the police officer, the department must revoke the offender's drivers license for a period of three months for a first offender, one year for a second offender, or 18 months for

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* Del. Code Ann. tit. 21, §§ 2740-50 (Supp. 1983). The Delaware law was adopted in 1982, and became effective on October 20, 1982. It was amended in 1983.

a third or subsequent offender. Prior offenses include any convictions for driving while under the influence in Delaware or any other state, prior revocations under this provision or for an implied consent refusal, or prior first-offender, pre-judgement diversions, all within the past five years.

The action is initiated by the department on the basis of the officer's probable cause and arrest. It may be based upon any violation of the law, whether it involves alcohol, drugs, or combined influence. The action is sustained during the hearing process by a finding that the offender violated the law.

In addition to the revocation, the department must require the offender to attend a course of instruction or a rehabilitation program. A license may not be restored prior to satisfactory completion of the course or program, payment of all relevant fees by the offender, and a favorable character investigation by the department.

Hearing. If the offender makes a written request for a hearing within 15 days of issuance of the temporary permit, a hearing must be scheduled within 30 days of the request. The revocation will be stayed until the final decision of the hearing officer. The hearing is before the secretary or a designee, and shall cover the following issues:

1. Whether the police officer had probable cause to believe the person was in violation of the law prohibiting driving while under the influence; and,

2. Whether by a preponderance of the evidence it appears that the person was in violation of that law. For purposes of this issue, a blood alcohol concentration of 0.10 percent of more, or a positive indication of drugs, "shall be conclusive evidence of said violation."

Judicial review of the hearing is available, but the appeal does not operate to stay the revocation of the license.

Miscellaneous. Another section describes a first-offender, pre-judgement diversion into a treatment program. When this program results in dismissal of the criminal charges, the court must make a written report of this fact to the department. Also, the drivers license of any person who enters this program is immediately revoked for a period of one year, and the law specifies that this revocation is not concurrent with or part of any period of revocation established under other provisions of this subchapter (which includes the revocation provisions described above). A limited license based upon hardship is available after 90 days.

DISTRICT OF COLUMBIA*

Overview. This law is much broader in scope than any of the others described in this study. It authorizes a pre-conviction suspension or revocation for any of a number of specified offenses. When an offender is charged with one of these offenses, the police must serve notice of suspension/revocation. The officer does not pick up the offender's license, but does stamp it to indicate that the notice has been served. If and when the offender requests a hearing, the license must be surrendered in exchange for a temporary permit. The license action is effective five days after the notice is given (ten days for nonresidents), but a hearing requested within five days stays the action. At the hearing, the department must prove sufficient grounds for the proposed action.

Action by the Enforcement Officer. When an offender is charged with one of the specified offenses, a police official must interview the offender and serve a notice of suspension or revocation on a form provided by the department. The specified offenses include operating while under the influence of intoxicating liquor or drugs, homicide by motor vehicle, leaving the scene of a personal injury accident, reckless driving resulting in personal injury, any felony in which a motor vehicle is used, operating a motor vehicle at a speed more than 30 mph over the limit, and any violation resulting in an accident where collateral of $50 or more, or bond in any amount, is required under court rules. The official must notify the department by telephone at the time the notice is given, and forward a copy of the notice to the department within 24 hours. The official must also place a stamped notation on the offender's District of Columbia license indicating that the notice has been served.

Action by the Department. Any of the offenses described above is grounds for either a suspension or revocation, in the discretion of the department, prior to conviction. The period of the suspension is from two to 30 days for a first suspension, or from 15 to 90 days for a subsequent suspension, based upon the seriousness of the case. The period of revocation is six months. Notice and opportunity for a hearing must be provided prior to the effective date of the suspension or revocation. The notice may be served by mail or in person; it must sufficiently describe the proposed action and the grounds for it. When the offender makes a timely written request for a hearing, the department is authorized to require surrender of the license. In such cases, the department must issue a temporary license valid until the hearing examiner's decision is issued.

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* 18 D.C.M.R. §§ 300.2, 301.1, 302, 306, 307, 308, 309, 1004, 1005 (1981). The District of Columbia law has been in effect for many years. The most recent version of the law results from a recompilation which was completed in 1981.

Hearing. When the offender makes a written request for a hearing wi. 'n five days of the notice of suspension/revocation, a hearing must be provided before a department hearing examiner, and the license action is stayed pending the hearing. At the hearing, the department is required to prove sufficient grounds for the proposed action. The hearing examiner must report findings of fact and, where applicable, conclusions of law. Following the hearing, the department may dismiss the action, order the proposed action to be taken, grant probation or allow a limited license in some cases where justified, or suspend the license where a revocation was proposed, based upon considerations of the licensee's driving record, character, need for the license, and safety of the public.

Miscellaneous. The law does not specify whether the license action is independent of the adjudication of the criminal charges. District licensing officials report that if the offender is convicted, they will enter a revocation based upon the conviction. Where the offender is found "not guilty" by the court, the license will be returned, but if the charges are disposed of in any other way, the suspension or revocation may be continued. Thus, for example, if the charges are dropped because the prosecutor decided not to prosecute the case, the department may hold another hearing and determine that a license suspension or revocation should be imposed, nevertheless.

INDIANA*

Overview. The law provides for mandatory suspension (for a minimum of 30 days, and thereafter for an additional 150 days or until disposition of the criminal charges, whichever occurs first) based upon a chemical test showing prima facie evidence of intoxication. The suspension is NOT independent of the disposition of the criminal charges. If the person is acquitted or the charges dismissed, the suspension ends. If convicted, the person is subject to whatever suspension is ordered by the court, with credit given for the time already suspended. The arresting officer obtains the person's drivers license and issues a temporary license valid until the license is suspended by the department, but the officer does not issue any notice of suspension. The department serves a suspension order by mail. The effective date of the suspension is not specified. Opportunity for a judicial hearing is provided, but apparently the suspension is not stayed pending that hearing.

Action by the Enforcement Officer. If a person submits to a chemical test under the implied consent law, and the test results show prima facie evidence of intoxication (0.10 percent or more, by weight, of alcohol in the blood), the officer must obtain the person's drivers license and issue a receipt which serves as a valid license until the person's driving privileges are suspended by the department. The officer must then submit a "probable cause" affidavit to the prosecuting attorney of the county in which the alleged offense occurred. This affidavit must include a statement of the officer's grounds for belief that the person was operating while intoxicated, a statement that the person was arrested for that offense, and a statement that the person submitted to a chemical test resulting in prima facie evidence the person was intoxicated, and it must be sworn by the officer. When a "judicial officer" has determined that there was probable cause to believe the person was operating while intoxicated, the prosecuting attorney forwards the person's drivers license and a copy of the officer's affidavit to the clerk of the court. The clerk forwards the same to the department.

Action by the Department. If the officer's affidavit states that a chemical test resulted in prima facie evidence that the person was intoxicated, the department must suspend the driving privileges of the person. Notice of the suspension and of the right to judicial review of the action must be given by mail to the last known address of the person. The period of suspension is 180 days or until the court notifies the department of disposition of the criminal charges, whichever occurs first. Any elapsed period of suspension must be credited toward any period of suspension ordered by the court following a conviction. Upon

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* Indiana 1983 Laws, P.L. 143 § 1, 1983 Advanced Legislative Service, Pamphlet 2A, p. 750.

a first conviction within five years, provided that the violation did not cause death or serious injury, the court may order suspension for a fixed period of not less than 90 days nor more than two years. In lieu of such suspension, the court may order the person placed on probation with a restricted driving privilege for a period of 180 days, but no such restricted privilege may be issued until at least 30 days of the administrative suspension has elapsed. Hence, the real effective minimum period of administrative suspension is 30 days. Upon a subsequent conviction, or any conviction where the violation resulted in death or serious injury, the court must order suspension for a fixed period of not less than one year nor more than two years, and no restricted driving privilege is authorized. The department is required to suspend the driving privilege as ordered by the court.

Hearing. No administrative hearing is provided. The law specifies that the person whose license is suspended administratively, prior to conviction, is entitled to "a prompt judicial hearing." The person may request such a hearing in the court having jurisdiction over the criminal charges growing out of the same incident. The law does not provide for any stay of the suspension pending that judicial hearing. The law specifies that the hearing is limited to the following issue:

> "Whether a judicial officer has determined that the arresting law enforcement officer had probable cause to believe that the person was operating a vehicle in violation of IC 9-11-2." (operating a vehicle while intoxicated)

The law specifies a second issue, but it is relevant only to cases of suspension based upon a refusal to submit to the test.

IOWA*

Overview. The law provides for mandatory revocation (for 120 days on a first offense) based upon the officer's sworn report of test results showing a blood alcohol concentration of 0.10 percent or more. This is independent of the disposition of criminal charges. The revocation is effective 20 days after notice is given. If test results are available immediately, the arresting officer can give the notice, collecting the license and issuing a temporary permit valid for 20 days. Opportunity for a hearing is provided, although it will not necessarily occur prior to the effective date of the revocation.

Action by the Enforcement Officer. The peace officer must certify to the department the following two facts:

1. That reasonable grounds existed to believe the person was operating a motor vehicle in violation of the law which prohibits operating a motor vehicle on the highways while under the influence or while having a blood alcohol concentration of 0.13 percent or more;

2. That the person submitted to chemical testing and test results show alcohol concentration of 0.10 percent or more.

Where the chemical test results are available, the peace officer may serve immediate notice of revocation on behalf of the department. In such a case, the officer takes possession of the person's Iowa license and issues a temporary license valid for 20 days. The officer sends the license to the department along with the affidavit of test results.

The peace officer is required to advise any person requested to submit to chemical testing that if the results are 0.10 percent or more, or if the person refuses to submit to the test, the department will revoke the license. The officer must advise the person of the revocation periods applicable in each of those circumstances (the revocation periods applicable to refusals are longer than those applicable to test results).

Action by the Department. The law provides that upon the officer's certification as described above, the department must revoke the person's license. The period of revocation is 120 days if the person has no prior alcohol-related revocations within the past six years, 240 days if the person has one prior revocation, and one year if the person has two or more prior revocations.

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* Iowa Code Ann. § 321B.16 (Supp. 1983). The Iowa law was adopted in 1982, and became effective on July 1, 1982.

The revocation is effective 20 days after notice of revocation is given. That notice may be given by certified mail or by the peace officer as described above.

Hearing. A person who has received notice of revocation or who has been issued a twenty-day permit as described above may make written request for a hearing. Such request must be made within 10 days of the effective date of the revocation or the date of issuance of the twenty-day permit. The department must grant a hearing within 20 days of receipt of the written request. The scope of the hearing is limited to the following issues:

1. Whether the peace officer had reasonable grounds to believe the person was operating a motor vehicle in violation of the law which prohibits driving while under the influence;

2. Whether the person refused the test, or the test results if the person submitted; and,

3. Whether the person should be issued a temporary restricted license.

The law specifies that the hearing may be recorded. Judicial review is available in accordance with the state's administrative procedure act.

Miscellaneous. Where a license has been revoked on the basis of test results, the law does not authorize revocation based upon a conviction growing out of the same event.

The presumptive blood alcohol level specified by the law for the offense of operating while under the influence is 0.10 percent. The Iowa law makes it illegal per se to drive with an alcohol concentration of 0.13 percent.

On application, the department may issue a "temporary restricted license" to a person whose license has been revoked as described above if necessary to performance of the person's normal occupation or for transportation to and from a treatment program, but the person may not operate a vehicle for pleasure while holding the restricted license.

LOUISIANA*

Overview. The law provides for mandatory suspension (90 days for a first offender) on the basis of implied consent test results showing a blood-alcohol concentration of 0.10 or more. The suspension appears to be independent of the disposition of the criminal charges. The arresting officer seizes the license and issues a receipt which is a valid license for 30 days. The license is suspended at the expiration of 30 days, or following a hearing if one is requested. The law omits provisions requiring a sworn report by the officer to the department.

Action by the Enforcement Officer. When a law enforcement officer requests a chemical test under the implied consent law, the officer must first inform the person of the consequences of a refusal and of test results showing alcohol concentration of 0.10 or more. The officer must have the person sign a form evidencing that the person was informed about his or her constitutional rights. If the person is unwilling or unable to sign the form, the officer must certify that the person was informed.

When the person has been arrested, and when the chemical test results show a blood alcohol level of 0.10 or more, the officer must seize the person's drivers license, and issue a receipt on a department form. This receipt serves as a valid, temporary license for up to 30 days. The receipt also notifies the person that a hearing, if desired, must be requested within 10 days of the arrest.

The law does not include any specific provisions requiring the officer to report to the department concerning the arrest. The implied consent law requires a sworn report of a test refusal, but the law does not provide for any report where the person submits to the test and the results show an unlawful alcohol concentration.

Action by the Department. The law specifies that if a request for a hearing is not made within 30 days of the arrest, the license is suspended. If a hearing is requested, the department must issue a temporary license valid until the hearing is completed.

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* 1983 Laws, P.A. 632 § 1 (H.B. 796), West's La. Session Law Service 1983, No. 5, p. 2493. The law was approved July 19, 1983. It becomes effective January 1, 1984.

The period of suspension is 90 days on a first offense, and 365 days on a second or subsequent offense within a period of five years. If the person is also suspended on the basis of a conviction growing out of the same incident, the suspension terms run concurrently. The law also requires the department to develop a plan providing for prompt suspensions within an average of 45 days from the date of arrest.

Hearing. An administrative hearing is held in the parish where the person seeking the hearing resides. The law does not specify a time within which the hearing must be held. It does provide that the department must "promptly schedule" a hearing, when one is requested. The hearing may be delayed only for good cause. The hearing may be rescheduled only once at the request of the person seeking the hearing, and in no event may it be rescheduled for a date more than 45 days after the arrest date.

The law specifies that the scope of the hearing will include the following issues:

1. Whether the office had reasonable grounds to believe the person was driving while under the influence;

2. Whether the person was arrested;

3. Whether the officer gave the required warnings;

4. Whether the person voluntarily submitted to an approved chemical test;

5. Whether the test showed alcohol concentration of 0.10 or more; and,

6. Such additional matters as relate to the reasonableness of the suspension.

Judicial review upon the record, without taking additional testimony, is available if application is made within 30 days of the decision of the hearing. The court may reverse the department only for action which exceeds constitutional or statutory authority, misinterpretation of the law, action which is arbitrary and capricious, or action which is unsupported by the evidence. Application for judicial review does not automatically stay the suspension.

Miscellaneous. It is unclear from the law whether a limited, hardship license is available during the suspension period. Louisiana officials indicate they are awaiting an opinion from the Attorney General on this point.

MAINE*

Overview. The law provides for mandatory suspension (90 days for a first offender) based upon a determination by the department that the person operated or attempted to operate a motor vehicle with an excessive blood-alcohol level (0.10 or more). The suspension is independent of the disposition of the criminal charges. The law does not authorize the arresting officer to seize the license and serve a notice of suspension. Suspension is handled entirely by the department after receipt of the officer's report. Notice of suspension is served by mail. If a hearing is requested, suspension is stayed pending completion of the hearing.

Action by the Enforcement Officer. The officer who arrests or summons a person for operating or attempting to operate a motor vehicle with an excessive blood-alcohol level (defined to be 0.10 percent or more by weight of alcohol in the blood) must immediately forward to the department, a report, under oath, of all information relevant to the enforcement action. The report must include the following:

1. Information which adequately identifies the person;

2. A statement of the officer's grounds for belief the person committed the offense;

3. A certificate, meeting the requirements of law, of the results of blood-alcohol tests which were conducted; and,

4. A copy of the traffic ticket filed with the court.

The report must be made on a form supplied by the department. If the blood-alcohol test was not analyzed by a law enforcement officer, the person who analyzed the results must forward a copy of his certificate to the department.

The law does not authorize the law enforcement officer to seize the drivers license of the arrested person. It also does not authorize the officer to give any notice of suspension on behalf of the department.

Action by the Department. Upon receipt of the officer's sworn report, if the department determines that the person operated with an excessive blood-alcohol level, the department must immediately issue a notice of suspension. The notice is sent by regular mail to the person at the last known address of record and to the address provided in the officer's report if the

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* 1983 Laws, ch. 505 § 1, West's 1983 Maine Legislative Service, No. 7, p. 2662. The law was adopted June 27, 1983, and becomes effective January 1, 1984.

addresses differ. The notice is deemed received by the person three days after mailing, unless it is returned by postal authorities. The notice must clearly specify the reason and statutory grounds for the suspension, the effective date of the suspension, the right of the person to request a hearing, and the date by which such a request must be made.

If no hearing is requested, the department's action based upon the officer's sworn report becomes final, and the suspension becomes effective. If a hearing is requested, the suspension is stayed pending the hearing. If a hearing is held, the department must make a final determination on the basis of evidence received at the hearing.

The term of license suspension is the same as upon conviction for operating with an excessive blood-alcohol level. It is 90 days for a first offender, and one year for a person who has one or more prior alcohol offenses within a period of six years.

Hearing. Request for a hearing must be made within 10 days from the effective date of the suspension. If it is, the suspension will be stayed pending completion of the hearing. The department may waive the 10-day limitation and grant a hearing requested after 10 days for good cause, including lack of actual notice of the suspension, but in such cases the suspension is not stayed pending the hearing.

The sole issue at the hearing is whether, by a preponderance of the evidence, there was probable cause to believe that the person was operating or attempting to operate with an excessive blood-alcohol level.

Judicial review of the final determination of the department is available, but the suspension remains in effect pending that review, unless otherwise ordered by the court.

Miscellaneous. A work-restricted license authorizing operating to and from, and within the scope of, the person's employment is available, in the discretion of the department, at any time during the period of suspension. Such permits are not restricted to first offenders only.

MINNESOTA*

Overview. The law provides for mandatory revocation (for a period of 90 days) based upon the peace officer's certification of probable grounds to believe the offender was driving while under the influence, and chemical test results showing an alcohol concentration of 0.10 or more. The revocation appears to be effective seven days after notice of revocation is given. The peace officer who directs the administration of the chemical test is required to give notice of revocation where the test results exceed the legal level. The officer must take the offender's license, and issue a temporary license valid for seven days. Administrative review (without hearing) is available at any time during the revocation period. Judicial review and hearing is available if a petition is filed within 30 days of revocation. Neither review stays the revocation. Opportunity for a hearing is not provided prior to the effective date of the revocation.

Action by the Enforcement Officer. At the time a chemical test specimen is requested, the officer must inform the offender of the following:

1. That if testing is refused, the license will be revoked for a period of six months;

2. That if testing indicates that the offender is under the influence, criminal penalties will apply, and the license may be revoked for a period of 90 days;

3. That the offender has a limited right to consult an attorney, but this may not unreasonably delay administration of the test;

4. That the offender has the right to have additional independent tests made.

If the offender submits to the test and it indicates an alcohol concentration of 0.10 or more, the officer must report the test results to the department, and to the appropriate prosecuting authorities. The officer must certify the following facts to the department:

1. That reasonable and probable grounds existed to believe the offender had been driving, operating, or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance;

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* Minn. Stat. Ann. § 169.123 (Supp. 1983), as amended by 1983 Laws, ch. 306, West's 1983 Minnesota Session Law Service, No. 5, p. 1885. The Minnesota law was adopted in 1976. It was subsequently amended, most recently in 1983.

2. That the offender submitted to chemical testing;

3. That the test results indicate an alcohol concentration of 0.10 or more.

The peace officer is also required, on behalf of the department, to serve immediate notice of intention to revoke and of revocation. The officer must take the offender's license, and must issue a temporary license effective for seven days. The officer must send the offender's license to the department along with the required certification.

Action by the Department. Upon receipt of the officer's certification as described above, the department is required to revoke the offender's license (license, permit, nonresident privilege, or privilege to receive a license) for a period of 90 days.

One section of the law specifies that the revocation becomes effective at the time the department, or the peace officer acting in behalf of the department, notifies the offender of the revocation. This is inconsistent, however, with the section which requires the peace officer, at the same time, to issue a temporary permit which is valid for seven days. We interpret the law as providing for revocation to become effective seven days following notice.

The notice of revocation, whether given by the officer or by the department, must advise the offender of the right to administrative and judicial review under the law. If the notice is mailed, it is deemed received three days after mailing to the last known address of the offender.

Hearing. The Minnesota provisions relating to hearing and review are very unusual. As amended in 1982, they no longer afford an opportunity for a hearing prior to the effective date of the revocation. There are two independent tracks for review:

1. Administrative Review. At any time during the revocation period, the offender may request in writing a review of the revocation by the department. Upon such a request, the department must review the evidence upon which the revocation was based and any other material information brought to its attention It must determine whether there is sufficient cause to sustain the order, and must report the results of the review in writing within 15 days of the request. The process is not a hearing, and it is not a prerequisite to judicial review. Request for administrative review does not stay the revocation.

2. Judicial Review. Within 30 days of receipt of the revocation notice, the offender may petition a county or municipal court for review. The petition for judicial review does not stay the revocation. The court may order a stay only if the hearing has not been held within 60 days after the petition is filed. The hearing is before the judge. It may be conducted

at the same time as the pre-trial motions in the criminal prosecution of the same charges, if any. The hearing is recorded. The department may be represented by its own attorney or by the local prosecuting attorney. The scope of the hearing is limited to the following issues:

1. Whether the peace officer had reasonable and probable grounds to believe the offender was driving, operating, or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance;

2. Whether the offender was lawfully arrested for violation of the state law against driving while under the influence, or was involved in an accident, or refused to take a preliminary screening test, or took the screening test and it recorded an alcohol concentration of 0.10 or more;

3. Whether the peace officer informed the offender of his rights and of the consequences of taking or refusing the test;

4. Whether the test was taken and results indicated an alcohol concentration of 0.10 or more at the time of testing;

5. Whether the testing method used was valid and reliable, and the test results were accurately evaluated.

Within 14 days of the hearing, the court must file its order either rescinding or sustaining the revocation. The decision may be appealed to the district court.

Miscellaneous. The law provides that the department may issue a limited license subject to conditions and limitations necessary to the interests of public safety to any offender whose license is revoked as described above. In practice Minnesota issues such limited licenses only to first offenders.

A person whose license is revoked on administrative determination as described above is not subject to revocation based on conviction on the first or second offense, but is subject to the additional revocation on a third offense.

The Minnesota law has been upheld by the State Supreme Court against the claim that it violates due process of law. See Heddan v. Dirkswager (Minn. filed July 1, 1983).

Another section of the law specifies that whenever the test results are 0.07 or more, that result must be reported to the department, which must keep the report in the driver's file. Whenever there are two or more such reports within a two year period, the department may require the driver to have an "alcohol problem assessment" at the driver's expense.

MISSISSIPPI*

Overview. The law provides for mandatory suspension (90 days for a first offender) based upon the officer's sworn report of chemical testing of the person's breath indicating a blood-alcohol concentration of 0.10 or more. The officer seizes the license and gives the person a receipt which is a valid license for 30 days. The receipt must also advise the person of the right to request a "trial" and "the effect of a denial of such request." If the receipt expires without a trial having been requested, the department must suspend the license. If a trial is requested, and if proper requests are made, it appears that the suspension can be stayed for up to but not more than 90 days pending the trial. The law is very unclear on many points.

Action by the Enforcement Officer. The law only specifies that if the chemical testing of a person's breath indicates the blood-alcohol concentration was 0.10 percent or more by "weight volume" of alcohol, the officer must seize the license and give the driver a receipt for the license on a form provided by the department. The officer must promptly forward the license together with a sworn report to the department. The law does not specify the content of the sworn report (although another section is quite specific about the content of a sworn report of a refusal to submit to the test).

The law provides as follows regarding the receipt which the officer must give to the person:

> The receipt given a person as provided herein shall be valid as a permit to operate a motor vehicle for a period of thirty (30) days in order that the defendant be processed through the court having original jurisdiction and a final disposition had; . . .
>
> The fact that the defendant has the right to request a trial and the effect of a denial of such request shall be plainly stated on the face of any receipt or permit to drive issued such defendant.

Action by the Department. The law provides that if the receipt expires without a trial having been requested, the department must suspend the license. The suspension apparently takes effect upon expiration of the receipt, although another section (§63-11-23) suggests the suspension might be effective 30 days after the department gives the person notice of suspension.

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* Miss. Code Ann. § 63-11-23 (Supp. 1983). The relevant amendments were added in 1983, effective July 1, 1983.

The period of suspension is the same as for a refusal under the implied consent law. The period is 90 days, but if the person has a prior conviction for driving while under the influence, the period is one year.

If the defendant does make a timely request for a trial, and makes a written request to the trial judge that the trial be held within the 30-day period, and if the defendant is not afforded a trial within that period, then the department must issue a temporary permit valid for another 30-day period. If the defendant makes another written request for the trial to be held within that second 30-day period, and if the trial is not so held, the department must issue a third 30-day permit. The law specifies that the defendant may not in any case be permitted to drive on such temporary permits for more than 90 days following the initial seizure of the license.

Hearing. The "trial" which may be requested by the defendant is apparently the only hearing provided. The law is unclear as to the nature of this trial or where it is to be held. It appears to be a judicial hearing, and it may be before the court having jurisdiction of any criminal charges growing out of the incident. It is unclear how it relates to the trial of those criminal charges. It may be that the two procedures are combined.

Miscellaneous. It appears that the court has authority after the expiration of 45 days of the suspension period of a first offender to reduce the remaining period or suspension and/or to issue a hardship license.

MISSOURI*

Overview. The law provides for mandatory suspension (30 days for a first offender) upon a determination by the department that the person was arrested upon probable cause to believe he was driving with an alcohol concentration of 0.13 or more. This determination is based upon the officer's verified report, or upon evidence presented at hearing, if a hearing is held. The suspension is independent of the disposition of criminal charges. Immediate notice of suspension is given by the officer if test results are available while the person remains in custody. The officer also takes possession of any Missouri license held by the person, and issues a temporary license valid for 15 days. Suspension is effective after 15 days unless a hearing is requested, in which case suspension is stayed pending final outcome of the hearing process. The law provides for two full hearings, one administrative and one judicial. The suspension is stayed through the entire process. Although the Missouri law draws much of its language from the original Model ROAD law, it differs substantively in many respects from that model.

Action by the Enforcement Officer. When an officer arrests a person for a violation of the law which prohibits driving while under the influence, and when a chemical test shows an alcohol concentration in the person's blood or breath of 0.13 percent or more by weight by weight of alcohol in the blood, the officer must send the department a verified report of all information relevant to the enforcement action, including the following:

1. Information which identifies the arrested person;

2. A statement of the officer's grounds for belief the person was driving in violation of the law which prohibits driving while under the influence;

3. A report of the results of any chemical tests made; and,

4. A copy of the citation and complaint filed with the court.

If chemical test results showing alcohol concentration of 0.13 or more are available while the person is still in custody, the officer must serve notice of suspension on the person, and take possession of any Missouri license held by the person. If the license is valid, the officer must issue a temporary permit valid for 15 days. The officer must also give the person a notice containing information about rights and liabilities under the

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* 1983 Laws, S.B. 318 & 135, West's 1983 Missouri Legislative Service, No. 4, p. 639. The law was approved July 12, 1983, and effective 90 days after legislative adjournment.

law, including a detachable hearing request form. The officer must forward the seized license and copies of the forms to the department along with the verified report.

Action by the Department. The department must suspend the license of a person upon its determination,

> That the person was arrested upon probable cause to believe he was driving a motor vehicle while the alcohol concentration in the person's blood or breath was thirteen-hundredths of one percent or more by weight of alcohol in his blood, . . .

Notice of the suspension is served by mail if it has not already been served by the officer. Suspension is effective 15 days after notice is given. If a hearing is requested within the 15-day period, suspension is stayed pending the hearing.

If the person's driving record shows no prior alcohol related enforcement contacts during the preceding 5-year period, the period of suspension is 30 days, followed by a 60-day period of restricted privileges allowing driving only to and from, or in connection with, employment or an alcohol treatment program. If the person has a prior alcohol related enforcement contact within five years, the period of suspension in one year.

Hearing. Request for hearing must be made within 15 days of receipt of the notice of suspension. The person must surrender the license with the request if not previously surrendered. The department must issue temporary permits as necessary to stay the suspension until the hearing process is completed.

The administrative hearing is held in the county where the arrest was made. The law does not specify any time limit within which the hearing must be held. The sole issue at the hearing is whether, by the preponderance of the evidence, the person was driving a vehicle while the person's alcohol concentration was 0.13 or more. The department must notify the person of its decision by certified mail. The decision becomes final 15 days after certification of the letter unless the person files an appeal in the circuit court in the county of the arrest.

Hearing in the circuit court is a trial de novo. The law specifically provides that it is to be conducted according to the rules of civil procedure and not as an appeal of an administrative decision under the administrative procedures act. The license suspension is automatically stayed, unless the court decides that a stay should not be allowed.

Miscellaneous. The use of a limited license after a 30-day suspension for a first offender is described above.

The law requires successful completion of an alcohol rehabilitation program prior to restoration of a license suspended under this law.

NEVADA*

Overview. The law provides for mandatory revocation (90 days) based upon the officer's written certificate that the officer has reasonable grounds to believe the person was driving with an alcohol concentration of 0.10 or more, as determined by a chemical test. If the person is later convicted, the administrative revocation is cancelled in favor of the revocation based upon the conviction, but the administrative revocation appears to be otherwise independent of the disposition of the criminal charges. If the test results showing an alcohol concentration of 0.10 or more are available, the officer must serve immediate notice of revocation on the person, advise the person regarding the right to administrative and judicial review, and issue a temporary license, valid for seven days. The person can request a hearing at any time during the revocation period, and the department must issue a temporary permit valid until after the hearing.

Action by the Enforcement Officer. Where test results showing 0.10 percent or more by weight of alcohol in the person's blood are obtained while the person is still present, the officer who obtained the test results, acting as an agent of the department, must immediately serve an order of revocation, seize the license, and, on request of the person, issue a temporary license valid for seven days. The officer must also advise the person of the right to administrative and judicial review.

Whenever test results are 0.10 or more, the officer must prepare and send to the department a written certificate that the officer had reasonable grounds to believe the person had been driving or in actual physical control of a vehicle while having 0.10 percent or more by weight of alcohol in the blood, as determined by a chemical test. A copy of the test results and any seized license must be forwarded with the certificate.

Action by the Department. The department is required to revoke the license of a person if test results show 0.10 percent or more by weight of alcohol in the blood at the time of the test. The revocation period is 90 days.

Upon receipt of test results and the officer's certificate, the department must determine whether revocation is proper. If it is, and if a revocation order was not served by the officer, the department must mail the order to the person at the last

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* 1983 Laws, ch. 426 (A.B. 167), Advance Sheets, Nevada Legislature, 62nd Session, 1983, Vol. II, p. 1065. The law was approved May 21, 1983, and effective July 1, 1983.

known address. Revocation is effective five days after the order is mailed, or upon expiration of the 7-day permit in cases where the notice was served by the officer, unless the department issues an additional temporary permit pending a hearing.

Hearing. A person whose license is revoked is entitled to a hearing. It may be requested at any time during the period of revocation. Upon such a request, the department must issue a temporary permit valid until the hearing is completed. A hearing must be conducted within 15 days of a request, or as soon thereafter as is practicable. If a continuance is granted at the request of the person whose license is revoked, the temporary permit must be terminated.

The hearing is held in the county where the person requesting the hearing resides, unless the parties agree to another location. The scope of the hearing is limited to the issue of whether the person had 0.10 percent or more by weight of alcohol in his or her blood at the time of the test.

Judicial review of the hearing is available. The reviewing court may stay the revocation upon appropriate terms if a substantial question is presented for review which is supported by affidavits or relevant portions of the hearing record. Any such stay must be terminated if a continuance is granted at the request of the person whose license is revoked.

Miscellaneous. The law authorizes issuance of a restricted hardship license which permits driving to, from, and in connection with employment to a first offender after half the revocation period has expired.

An administrative revocation as described above must be terminated if the person is convicted of the criminal charges, and the elapsed time of revocation must be credited against the period of license revocation imposed on the basis of the conviction.

NORTH CAROLINA*

Overview. This law is very different in substance and procedure. It provides for license revocation (10 days) based upon the officer's reasonable grounds to believe the person was driving while impaired, and upon chemical test results showing alcohol concentration of 0.10 or more. The enforcement officers submit a report to a "judicial officer." If the judicial officer determines that there was probable cause, he immediately issues a revocation order. The revocation is effective as soon as the person is notified, but the ten-day revocation period begins to toll only when the person surrenders his license. If surrender is not made within five days, the revocation period is extended to 30 days. The person is entitled to a hearing, but the revocation is not stayed, and there is no judicial review.

Action by the Enforcement Officer. Where test results indicate that a person is subject to license revocation under this law, the charging officer and the chemical analyst must execute a sworn revocation report indicating that the conditions for license revocation under the law have been met. The report is filed with the judicial official who is conducting the initial appearance or any other proceeding relating to the underlying criminal charges, or with the court clerk if no proceedings are being held when the report is filed.

Action by the Department. In this case, the relevant action is taken by the court rather than by the department. The law specifies that either the judicial official during the proceedings, or the court clerk at other times, must determine whether there was probable cause. If there was probable cause, the judicial official or clerk must enter an immediate revocation notice. If the person is before the court, the notice is served in person, and surrender of the drivers license is required. If the person is not before the court at the time, the clerk mails the notice. The order is effective four days after mailing. The person must surrender his license to the court within five days of the effective date of the revocation order, or the court must issue an order to pick up the license. The period of revocation is ten days, but if the license is not surrendered within five days, the period of revocation is extended to 30 days.

Apparently, the department plays no role in this process. One provision seems to require the court clerk to report to the department in some cases, but specifies that where the license is surrendered and the ten-day minimum revocation is imposed, no report to the department is required.

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* 1983 Laws, ch. 435 § 14 (S.B. 1), 1983 Advance Legislative Service to the General Statutes of North Carolina, No. 3, p. 52, 62. The law was approved on June 3, 1983, and became effective on October 1, 1983.

Hearing. The person whose license is revoked is entitled to a hearing, but the license revocation is not stayed pending that hearing. The person may request the hearing at the time of the initial appearance on the criminal charges, or at a later time.

The hearing is held before a court magistrate, unless the person requesting the hearing asks that it be heard by a district court judge. The hearing must be held within three working days of the request if held before a magistrate, or within five working days of the request if held before a judge. If the hearing is not held within those time limits, the revocation must be rescinded, unless the person contributed to the delay.

The hearing request must specify the grounds upon which the validity of the revocation is challenged. A witness may submit his evidence by affidavit, unless subpoenaed to appear. The court may accept as true any matter stated in the officer's sworn revocation report unless that matter is contested by the person requesting the hearing. Determination of the issues is based upon the "greater weight of the evidence." The relevant issues are as follows:

1. Whether the enforcement officer had reasonable grounds to believe the person had committed an offense involving driving while impaired;

2. Whether the person was charged with that offense;

3. Whether the officer and analyst complied with the legal requirements for taking the chemical test; and,

4. Whether the person had an alcohol concentration of 0.10 or more.

The law specifies that the decision of the court upon the hearing is final and may not be appealed.

Miscellaneous. No limited driving privilege is allowed during the ten-day period of revocation.

NORTH DAKOTA*

Overview. This law provides for a mandatory suspension (90 days for a first offense) upon a determination that the person was driving with a blood-alcohol concentration of at least 0.10 percent by weight. The determination can be based upon the officer's sworn report, or upon evidence presented at a hearing. The suspension appears to be independent of the disposition of the criminal charges. If test results are available, immediate notice of the department's intention to suspend is given by the officer, who also seizes the person's North Dakota license, and gives the person a temporary permit valid for 20 days, after which the suspension is effective unless a hearing is requested.

Action by the Enforcement Officer. If the test results show a blood-alcohol concentration of at least 0.10 percent by weight within two hours after driving, the officer must issue a temporary operator's permit which is valid for 20 days. The permit also serves as the department's official notification of intention to suspend the person's license. If the person holds a North Dakota license, the officer must seize it. If the person holds a license issued by another state, the officer does not seize it, but does issue the temporary permit.

In cases where a blood test is used, on receiving the results from the state toxicologist showing concentration of at least 0.10, the officer must at that time locate the person and take possession of the license and issue the temporary permit. If the person lives in another county, the officer must notify the sheriff of that county, and the sheriff must then take possession of the license and issue a temporary permit. If the person lives in another state, the officer must mail the temporary permit to the person.

Within five days of issuing a temporary permit, the officer must forward a sworn report to the department along with the seized license. The report must show the following:

1. That the officer had reasonable grounds to believe the person had been violating the law which prohibits driving or being in actual physical control of a motor vehicle while under the influence;

2. That the person was lawfully arrested; and,

3. That the person was tested in accordance with the requirements of the law, and the results of the test show an alcohol concentration of at least 0.10 percent by weight.

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* N.D. Cent. Code §§ 39-20-03.1, -03.2, -04.1, -05, -06 (Supp. 1983). The law was adopted in 1983, and became effective on July 1, 1983.

Action by the Department. Upon receipt of the officer's report, if it appears that the person was driving while having a blood alcohol concentration of at least 0.10 percent, the department must suspend the license. The suspension period is 90 days upon a first offense, and one year if the person has a prior offense within five years.

Hearing. Opportunity for a hearing is provided prior to the effective date of the suspension if the person requests a hearing within five days after issuance of the notice of intention to suspend (the temporary permit). The hearing must be held within 20 days after the date of issuance of the notice of intention to suspend.

The hearing is held before a hearing officer assigned by the department and at a time and place designated by the department. The hearing must be recorded. At the close of the hearing, the hearing officer must notify the person in writing of the findings of the hearing. If the hearing officer finds, based on a preponderance of the evidence, that the person was operating a motor vehicle with a blood-alcohol concentration of at least 0.10 percent, the officer must immediately take possession of the person's temporary permit. The issues which are relevant to this determination are the same as the elements listed above for the officer's sworn report.

Judicial review upon the record, without taking additional testimony, is available if requested within seven days after the final decision of the department. The law specifies that neither the department nor the court may stay the suspension pending judicial review. The court must affirm the department's decision unless it finds the evidence insufficient to warrant it. The court may also direct the matter back to the department for presentation of additional evidence.

Miscellaneous. Apparently, hardship licenses are available to first offenders after 30 days of the suspension period have expired.

OKLAHOMA*

Overview. The law provides for mandatory revocation (for 90 days) based upon the officer's sworn report and test results showing an alcohol concentration of 0.10 or more. The revocation is effective 30 days after notice is given. Where test results are immediately available, the notice is given and the license is seized by the arresting officer. The officer then issues a receipt which constitutes valid evidence of the driving privilege for 30 days. Opportunity for hearing is provided prior to the revocation's effective date. All this is independent of disposition of the criminal charges. Another section requires revocation upon conviction for driving while under the influence.

Action by the Enforcement Officer. Any arrested person whose alcohol concentration is 0.10 or more as shown by blood or breath testing under the implied consent law is required to surrender their license to the arresting officer. The officer is required to seize any such license surrendered or found on the offender during a legal search. If the license appears to be valid, the officer must issue a receipt on a form provided by the department. The receipt is a valid license for 30 days from its date of issuance. The receipt form also contains a notice of revocation, effective in 30 days. The officer is required to forward the following to the department, either in person or by mail, within 72 hours of the issuance of the receipt:

1. The seized license;

2. A copy of the receipt issued to the offender;

3. A written report of the test results; and,

4. A sworn report of the reasonable grounds to believe the offender was driving while under the influence.

Failure of the officer to file the report within 72 hours does not affect the authority of the department to revoke.

Action by the Department. The law provides that upon receipt of the officer's report showing that the offender had an alcohol concentration of 0.10 or more and that the officer had reasonable grounds to believe the offender was driving while under the influence, the department shall revoke the license (or nonresident privilege or the privilege of having a license issued) for a period of 90 days. Revocation is effective 30 days after the offender is given written notice, either by the officer as described above or by the department.

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* Okla. Stat. Ann. § 47-754 (Supp. 1983). The law was adopted in 1983, but the relevant provisions did not become effective until July 1, 1983.

Hearing. Upon a written request received within 15 days after the notice of revocation is given, the department must grant the offender an opportunity to be heard. The request operates to stay the revocation until disposition of the hearing, unless the offender is currently under suspension/revocation for some other reason. If necessary, the department may issue temporary permits while the hearing is pending. The hearing is held before the commissioner or an authorized agent, and covers the following issues:

1. Whether the officer had reasonable grounds to believe the offender was driving while under the influence;

2. Whether the person was arrested;

3. Whether the testing procedures used were in accordance with state regulations;

4. Whether the offender was advised that the license would be revoked if test results reflected an alcohol concentration of 0.10 or more;

5. Whether the test results in fact reflected an alcohol concentration of 0.10 of more; and,

6. Whether the blood or breath specimen was obtained within two hours of the arrest.

The hearing must be recorded. After the hearing, the revocation may be rescinded or sustained.

Miscellaneous. Other law authorizes the courts to modify revocations in order to alleviate hardship related to employment.

OREGON*

Overview. The law provides for mandatory suspension (90 days for a first offender) based upon the officer's sworn report of test results showing an alcohol concentration of 0.08 or more. The suspension is independent of the disposition of criminal charges. Immediate notice of intention to suspend is given by the enforcement officer, who also seizes the person's Oregon license and issues a temporary permit valid for 30 days. Opportunity for a hearing is provided within that 30 day period. The suspension is effective upon expiration of the 30-day permit.

Action by the Enforcement Officer. If a person tested under the implied consent law has a level of alcohol in the blood which constitutes being under the influence (0.08 percent or more by weight of alcohol in the blood, based upon analysis of blood, breath, or urine), the officer must do all of the following:

1. Seize the person's Oregon drivers license;

2. Provide the person with a written notice of the department's intention to suspend the license on a form which also explains the person's rights under the law;

3. If the person is qualified and has surrendered a valid license, issue to the person a temporary driving permit valid for 30 days; and,

4. Within the period of time specified in regulations, forward to the department any license seized, a copy of the notice or intention to suspend given to the person, and a sworn report of action taken under this law.

The officer's sworn report to the department must disclose all of the following:

1. Whether the person was under arrest for driving while under the influence at the time a test was requested;

2. Whether the officer had reasonable grounds to believe, at the time the test was requested, that the person had been driving while under the influence;

3. Whether the level of alcohol in the person's blood, as shown by the test, was sufficient to constitute being under the influence (0.08 or more);

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* 1983 Laws, ch. 721 (S.B. 710), Commerce Clearing House, Advance Session Laws Reports 1799. This law was approved on August 4, 1983, but it does not take effect until July 1, 1984. See also, 1983 Laws, ch. 722 (H.B. 2420), CCH ASLR 1853, and 1983 Laws, ch. 822 (H.B. 2826), CCH ASLR 1879.

4. Whether the person was informed of the consequences of test results showing the person to be under the influence;

5. Whether the person was informed of rights under the law;

6. Whether the person was given the written notice of intention to suspend as required by the law;

7. A statement affirming that the person conducting the test was qualified and certified; and,

8. A statement affirming that the methods, equipment, and procedures used comply with the requirements of law.

Action by the Department. Upon receipt of the officer's sworn statement, the department must suspend the license, effective 30 days after the date of arrest, unless the department determines on the basis of evidence presented at a hearing that suspension is not justified.

The period of suspension is 90 days, but if the person has a prior offense within five years, the suspension period is one year. A prior offense includes any suspension under this act, or any conviction for driving while under the influence (or any diversion of such charges into an alcohol-treatment program) in Oregon or any other state.

Hearing. If a hearing is requested within 10 days of the arrest, the hearing must be held and a decision rendered within 30 days of the arrest. The law also provides that the department may grant a hearing upon a request received more than 10 days after the arrest if good cause for the failure to make a timely request is shown, but in that case the requirement to hold the hearing within 30 days of the arrest does not apply.

The hearing is held before a representative of the department in the county where the arrest occurred or at a place designated by the department within 100 miles of the place of the arrest, unless the parties agree to another location. The hearing is to determine whether the suspension is valid. That determination must be based upon all those factors listed above which constitute the content of the officer's sworn report.

Judicial review is available by petition to the county court in the county of the person's residence within 30 days of the issuance of the final order by the department. The review is limited to the record established at the hearing. The suspension is not stayed pending the review.

Miscellaneous. A hardship occupational license is available at any time to a first offender. A person with a prior offense may obtain an occupational license only after 90 days of the suspension period have elapsed.

UTAH*

Overview. The law provides for mandatory suspension (90 days for a first offense) upon a determination that the person violated the law which prohibits driving with a blood alcohol level of 0.08 or more, or while under the influence of alcohol, drugs, or a combination of alcohol and drugs. This suspension is independent of disposition of the criminal charges. Immediate notice of the department's intention to suspend, and a notice containing basic information about how to obtain a hearing, is served upon the person by the enforcement officer. The officer also takes possession of the person's Utah drivers license, and issues a temporary permit valid for 30 days. An opportunity for hearing is provided within the 30-day period. The suspension is effective upon expiration of the 30-day permit.

Action by the Enforcement Officer. If chemical test results indicate blood alcohol content of of 0.08 percent or more by weight, or if the officer makes a determination that the person was otherwise in violation of the law which prohibits driving while under the influence of alcohol, drugs, or a combination of alcohol and drugs, with reasonable grounds to believe the determination is correct, the officer must serve notice of the department's intention to suspend the person's license. The officer also gives the person a form with basic information about how to obtain a hearing on the suspension. If the person has a Utah license, the officer takes possession of it and issues a temporary permit valid for 30 days.

The officer is then required to send to the department within five days of the date of arrest a sworn report indicating the chemical test results, if any, and any other basis for the officer's determination that the person was driving while under the influence, and the officer's belief regarding that violation. Any license taken and a copy of the citation issued must be forwarded with the report.

Action by the Department. The department must determine whether the license will be suspended if a hearing is requested as discussed below. Unless a hearing is requested and the department determines to not suspend the license, the suspension becomes effective on the 31st day following the date of arrest.

The period of suspension is 90 days on a first such suspension, and 120 days on a second or subsequent suspension.

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* Utah Code Ann. §§ 41-2-19.5, -19.6, -20 (Supp. 1983). The law was adopted in 1983 and became effective August 1, 1983.

Hearing. Upon written request of the person received within ten days of the arrest, the department must grant a hearing. It is held in the county where the arrest occurred, unless the parties agree to a different location. The hearing must be held within 30 days of the date of the arrest.

The hearing must be "documented," and must cover the issues of whether the officer had reasonable grounds to believe the person was operating a motor vehicle in violation of the law which prohibits driving while under the influence, and the results of the chemical test.

Judicial review may be obtained by filing a petition with the court in the county where the person resides within 30 days of the department's final decision. The courts jurisdiction is limited to a review of the record to determine whether or not the department's decision was arbitrary or capricious.

Miscellaneous. The law does not provide for issuance of a hardship permit during the suspension period.

WASHINGTON*

Overview. The law provides for mandatory suspension or revocation (90 day suspension for a first offender) based upon test results showing an alcohol concentration of 0.10 percent or more. This license action is independent of the disposition of criminal charges. Immediate notice of the department's intention to suspend or revoke the license is given by the officer, who also confiscates the person's Washington license and issues a temporary license valid for 45 days to a person who surrenders a current, valid license. Opportunity for a hearing is provided within the 45 day period of the temporary license. The license action becomes effective when sustained at the hearing, or upon expiration of the temporary license, whichever is first.

Action by the Enforcement Officer. When the officer has complied with all the legal requirements applicable to taking a test, and the results show alcohol concentration of 0.10 percent or more, the officer must serve notice of the department's intention to suspend or revoke the license. The officer must confiscate any Washington license held by the person, and, if the person surrenders a current, valid license, issue a temporary permit valid for 45 days.

The officer must immediately forward to the department any confiscated license and a sworn report stating the following:

1. That the officer had reasonable grounds to believe the person had been driving or in control of a vehicle while under the influence;

2. That, after being warned of the consequences as required by law, the person refused to submit, or submitted, or a test was taken without consent, whichever is appropriate;

3. That the applicable requirements of law were met before administering the test, and the the test was administered in accordance with statutory requirements; and,

4. That the results of the test indicated an alcohol concentration in the person's blood of 0.10 percent or more.

Action by the Department. The department must suspend the person's license for a period of 90 days on a first incident, and must revoke the license for a period of one year on a second incident within five years, and for a period of two years on a third or subsequent incident within five years.

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* 1983 Laws, ch. 165 §§ 2-11, 24, Washington 1983 Session Laws, p. 730. The law was approved May 11, 1983, but the relevant sections are not effective until January 1, 1985.

One section of the law specifies that the suspension or revocation takes effect when the action is sustained at a hearing. Another section specifies that the hearing order becomes effective ten days after it is issued. In cases where no hearing is requested, the action becomes effective upon expiration of the 45-day temporary permit.

Hearing. If a hearing is requested in writing within seven days of service of the notice of intention to suspend or revoke, the department must provide a hearing within 45 days of the date of the arrest. If the hearing is not held within that time period, a license suspension or revocation may not be imposed.

The administrative hearing is held in the county where the arrest occurred, unless the parties agree to another location. The hearing is held in accordance with rules adopted by the department. The scope of the hearing includes all of the issues described above as part of the officer's sworn report. In addition, whether the person was placed under arrest is an issue. The law also specifies that the person may challenge whether the testing methods used were valid and reliable.

Judicial review of the department's order is available in the court of either the county of the person's residence or the county where the arrest occurred. Petition must be filed within 10 days of receipt of the department's final order. The review is upon the record unless procedural irregularities are alleged, in which case the court may take testimony on that issue alone.

The filing of a petition for judicial review does not automatically stay the suspension or revocation, but the court may issue a stay upon findings that there is a reasonable probability the petitioner will prevail on the merits, and that the public interest will not be substantially harmed by a stay, and that the petitioner will be irreparably harmed if a stay is not issued.

Miscellaneous. An occupational license is available for a first offender after 30 days of the suspension period have elapsed. Such a license may also be available to a second offender, but the law is unclear. An occupational license is not available to a third or subsequent offender.

WEST VIRGINIA*

Overview. The law provides for mandatory revocation (six months for a first offender) based upon the officer's statement and any applicable test results. Revocation is ordered by the department if it determines that the person had an alcohol concentration of 0.10 percent or more, or that the person was under the influence of alcohol or drugs. Notice of revocation is mailed to the person, and revocation is effective ten days after receipt of the notice. If a hearing is requested within those ten days, revocation is stayed pending the hearing. Based upon determinations at the hearing, the license may be revoked for specified periods ranging from six months to life, depending upon the person's prior record and the nature and consequences of the current violation. All of this is independent of the disposition of the criminal charges.

Action by the Enforcement Officer. The officer who makes an arrest for driving while under the influence must make a written statement to the department within 48 hours, including the name and address of the person arrested, the specific offense charged, and if applicable, a copy of the test results. Although the officer's statement is not sworn, the law specifies that signing the statement constitutes an oath or affirmation of the truth of the information and that copies of documents included with the statement are true copies.

Action by the Department. The department must revoke the person's license if it makes the following determinations on the basis of the officer's statement and the test results:

1. That the person was arrested for driving while under the influence, and either of the following:

2. That at the time of the test the alcohol concentration in the person's blood was 0.10 percent or more; or,

3. That at the time of the arrest the person was under the influence of alcohol, controlled substances, or drugs.

A copy of the revocation order must be sent to the person by registered or certified mail, with return receipt requested. The revocation is effective ten days after receipt of the notice, unless a hearing is requested within that ten days.

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* West Virginia Code Ann. §§ 17C-5A-1 to -4 (Supp. 1983). The West Virginia law was adopted in 1981, and became effective on September 1, 1981. The law was extensively amended in 1983.

The law also specifies that upon receipt of the officer's statement, the department must search all appropriate records of the person for prior offenses relating to driving while under the influence, and must forward an abstract of any to the police officer within 48 hours.

Hearing. If the person submits a written request for a hearing within ten days of receipt of the revocation notice, a hearing opportunity must be provided. The hearing must be before the commissioner or a designated agent, and must be held within 20 days of the request, unless postponed or continued. Revocation is stayed pending the hearing.

The law requires the commissioner to make specific findings in regard to the following issues:

1. Whether the arresting officer had reasonable grounds to believe the person was driving while under the influence;

2. Whether the person was lawfully arrested for an offense involving driving while under the influence; and,

3. Whether the tests were administered in accordance with the provisions of law.

The law specifies that the principal issue at the hearing is whether the person drove a motor vehicle while under the influence of alcohol, any controlled substances, or drugs, or drove a motor vehicle while having an alcohol concentration in his blood of 0.10 percent or more, by weight.

If the commissioner makes a determination adverse to the offender on the principal issue, the license must be revoked for a period of six months, or for a period of ten years if the license has previously been suspended under this provision, or for the life of the offender if the license has previously been suspended more than once under this provision.

Additionally, the commissioner may make determinations which relate to the nature and consequences of the violation, and these determinations affect the period of revocation. Thus if a death resulted and the offender's conduct was reckless, the revocation period is ten years or life, depending upon the offender's prior record of suspensions. If a death resulted and the offender's conduct was negligent, the revocation period is five years or

life, depending upon the prior record. If bodily injury to another resulted, the revocation period is two years or ten years, or life, depending upon the prior record. These determinations are based upon the preponderance of the evidence. Each of the possible determinations parallels a separate criminal offense defined by other law.

If the commissioner finds in favor of the offender on the issues discussed above, the revocation order must be rescinded or modified to be consistent with the findings. If the finding is adverse to the offender, judicial review is available, but the revocation order will not be stayed during the pendency of that review unless the court orders a stay following a hearing and finding that there is a reasonable probability that the offender will prevail upon the merits and that irreparable harm will result if a stay is not granted.

Miscellaneous. The law contains provisions relating to the early reissuance of a license revoked for various time periods as described above. Each provision specifies a minimum time period which must elapse, requires the offender to successfully complete a treatment program and to pay all associated costs, prior to restoration. Where the revocation period is six months, for example, the minimum period of revocation which must elapse before restoration can be made to a person who meets all the other qualifications is 90 days.

COMPARISON OF STATE LAWS

Revocation on Administrative Determination (ROAD)

This portion of the report compares the ROAD provisions and the laws of 19 states which provide for revocation or suspension on the basis of an administrative determination that the person drove a motor vehicle while having an unlawful alcohol concentration or while otherwise under the influence. The comparisons are in chart form. In the charts, the following abbreviations are used for the states:

Alaska	AK
Colorado	CO
Delaware	DE
District of Columbia	DC
Indiana	IN
Iowa	IA
Louisiana	LA
Maine	ME
Minnesota	MN
Mississippi	MS
Missouri	MO
Nevada	NV
North Carolina	NC
North Dakota	ND
Oklahoma	OK
Oregon	OR
Utah	UT
Washington	WA
West Virginia	WV

COMPARISON OF MODEL REVOCATION ON ADMINISTRATIVE DETERMINATION LAW AND COMPARABLE STATE LAWS

	MODAD	AK	CO	DE	DC	IN	IA	LA	ME	MN	MS	MO	NV	NC	ND	OK	OR	UT	WA	WV
1. What license action is taken?					LS														LS	
Revocation	◇	◇	◇	◇	◇		◇			◇			◇	◇		◇			◇	◇
Suspension					◇	◇		◇	◇		◇	◇			◇		◇	◇	◇	
2. Is the action mandatory or discretionary?																				
Mandatory	◇	◇	◇	◇		◇	◇	◇	◇	◇	◇	◇	◇	◇	◇	◇	◇	◇	◇	◇
Discretionary					◇															
3. What is the period of the license action?					LS	LS						LS								
First offense	3m	90d	1y	3m		180d	120d	90d	90d	90d	90d	30d	90d	10d	90d	90d	90d	90d	90d	6m
Second offense	1y	1y		12m			240d	365d	1y		1y	1y			1y		1y	120d	1y	10y
Third and subsequent offenses		10y		18m			1y												2y	life
d = day(s) m = month(s) y = year(s)																				
4. How does this period of license action compare with the period of suspension or revocation imposed for refusing to submit to testing under the implied consent law?		same	same	less	less	less	less	less	less	less	same	less	less	less	less	less	less	less	less	less
5. How does this period of license action compare with the period of suspension or revocation imposed following a conviction for driving while under the influence?		same	same	less	less	more	less	more	same	more	same	same	same	less	same	less	less	same	same	NA
6. The suspension or revocation is —					LS						LS		LS							
Temporary, pending adjudication of the criminal charges.						◇														
Independent of the disposition of the criminal charges.	◇	◇	◇	◇			◇	◇	◇	◇		◇		◇	◇	◇	◇	◇	◇	◇

LS — see the Law Summary for more information

NA — the law does not specify this information, or the question is not applicable

COMPARISON OF MODEL REVOCATION ON ADMINISTRATIVE DETERMINATION LAW AND COMPARABLE STATE LAWS

	ROAD	AK	CO	DE	DC	IN	IA	LA	ME	MN	MS	MO	NV	NC	ND	OK	OR	UT	WA	WV
7. The basis for the suspension or revocation is —					LS															
Evidence the offender drove a vehicle while having an unlawful concentration of alcohol in the blood.	◇	◇	◇			◇	◇	◇	◇	◇	◇	◇	◇	◇	◇	◇	◇		◇	
Evidence the offender drove a vehicle while under the influence of alcohol, drugs, or alcohol and drugs.				◇							•							◇		◇
8. Notice of suspension or revocation is generally given the offender by —														LS						
The arresting officer.	◇	◇	◇	◇	◇		◇	◇		◇	◇	◇	◇		◇	◇	◇	◇	◇	
The state driver licensing agency.						◇			◇											◇
9. The facts which trigger service of a suspension or revocation notice by the officer are —					LS	NA			NA					NA						NA
The officer has reasonable grounds to believe the person was driving a vehicle while under the influence.				◇			◇			◇										
The person was arrested and charged with driving a vehicle while under the influence.	◇		◇	◇	◇			◇				◇				◇				
A chemical test was conducted under the implied consent law.	◇	◇	◇				◇			◇	◇	◇	◇		◇	◇	◇		◇	
The test results indicate alcohol concentration exceeding the legal standard.	◇	◇	◇				◇	◇		◇	◇	◇	◇		◇	◇	◇		◇	
A determination is made that the person had an unlawful alcohol concentration or was under the influence of alcohol or drugs.																		◇		

LS — see the Law Summary for more information

NA — the law does not specify this information, or the question is not applicable

COMPARISON OF MODEL REVOCATION ON ADMINISTRATIVE DETERMINATION LAW AND COMPARABLE STATE LAWS

	ROAD	AK	CO	DE	DC	IN	IA	LA	ME	MN	MS	MO	NV	NC	ND	OK	OR	UT	WA	WV
10. Does the arresting officer seize the person's drivers license and issue a temporary permit in its place?					LS				LS					LS						LS
Yes, whenever the officer initiates license action against the person.		◇				◇		◇		◇	◇		◇			◇				
Yes, as above, but only when the person holds a valid license issued by the state in which the arrest occurs.	◇		◇	◇			◇					◇			◇ LS		◇	◇	◇	
No, the officer does not seize the person's license or issue a permit.					◇				◇					◇						◇
11. The temporary permit issued by the officer is valid for the number of days shown.	15	7	7	15	NA	NA	20	30	NA	7	30	15	7	NA	20	30	30	30	45	NA
12. The facts which trigger the requirement that the officer make a report to the state driver licensing agency are —					NA	LS		NA						NA						
The officer had reasonable grounds to believe the person was driving a vehicle while under the influence.				◇		◇				◇										
The person was arrested and charged with driving a vehicle while under the influence.	◇		◇	◇					◇			◇				◇				◇
A chemical test was conducted under the implied consent law.						◇				◇	◇					◇	◇		◇	
The test results indicate alcohol concentration exceeding the legal standard.						◇				◇	◇	◇	◇			◇	◇		◇	
The officer served a notice of suspension or revocation upon the person.		◇					◇								◇			◇		

LS — see the Law Summary for more information

NA — the law does not specify this information, or the question is not applicable

COMPARISON OF MODEL REVOCATION ON ADMINISTRATIVE DETERMINATION LAW AND COMPARABLE STATE LAWS

	MODAD	AK	CO	DE	DC	IN	IA	LA	ME	MN	MS	MO	NV	NC	ND	OK	OR	UT	WA	WV
13. The officer's report to the state driver licensing agency must include —					NA LS			NA LS			NA LS			NA LS						
A statement of all information relevant to the enforcement action.	◇	◇	◇						◇			◇								
A statement that the officer had reasonable grounds to believe the person was driving while under the influence.				◇			◇			◇			◇		◇	◇	◇		◇	
A statement describing the officer's grounds for belief that the person was driving while under the influence.	◇	◇	◇			◇			◇			◇						◇		
A statement that the person was arrested and charged with driving while under the influence.				◇		◇									◇	◇	◇			◇
A statement that a chemical test was administered under the implied consent law.						◇	◇			◇					◇				◇	
A statement that chemical test results indicate alcohol concentration exceeding the legal standard.		◇				◇	◇			◇					◇		◇		◇	
A statement that any chemical tests were administered according to the requirements of state law.																	◇		◇	
A written report of the chemical test results from the agency which performed the test.	◇		◇						◇			◇	◇			◇		◇		◇
A copy of the suspension or revocation notice served on the person, or a statement that the notice was served.	◇	◇											◇				◇			
A copy of the temporary permit issued to the person, or a statement that such a permit was issued.	◇											◇	◇			◇				
Information which identifies the person.	◇		◇						◇			◇								◇
A copy of the criminal complaint.	◇		◇						◇			◇						◇		
Any license surrendered by the person.	◇	◇	◇	◇		◇	◇			◇	◇	◇	◇		◇	◇	◇	◇	◇	
See the Law Summary for additional items.		◇				◇						◇	◇				◇			

LS -- see the Law Summary for more information

NA -- the law does not specify this information, or the question is not applicable

COMPARISON OF MODEL REVOCATION ON ADMINISTRATIVE DETERMINATION LAW AND COMPARABLE STATE LAWS

	ROAD	AK	CO	DE	DC	IN	IA	LA	ME	MN	MS	MO	NV	NC	ND	OK	OR	UT	WA	WV
14. Within how much time after the arrest must the officer's report be submitted?		NA	NA	NA	NA	NA		NA		NA	NA			NA						
The report must be submitted "immediately."	◇						◇		◇				◇						◇	
The report must be submitted within the time indicated (h = hours; d = days).															5d	72h		5d		48h
The time is to be specified in regulations of the department.												◇					◇			
15. The law specifies that the officer's report to the driver licensing agency must be —					NA			NA						NA						LS
A "sworn" report.	◇	◇				◇			◇		◇				◇	◇	◇	◇	◇	
A "verified" report.			◇									◇								
A "certified" report.				◇			◇			◇			◇							◇
16. Is an opportunity for a hearing provided prior to the effective date of the suspension or revocation?	no	yes	yes	yes	yes	no	no	yes	yes	LS	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
17. Within how many days following receipt of the suspension or revocation notice must a hearing be requested?	NA	7	7	15	5	NA	10	10	10	LS	30	15	LS	NA	5	15	10	10	7	10
18. Within what period of time must the hearing be held?		NA			NA	NA		LS	NA	LS	NA LS	NA	LS	LS		NA				
Within the specified number of days from the date of receipt of the notice.	30		60	30			20						15	3-5	20					20
Within the specified number of days from the date of the arrest.								45									30	30	45	
19. Is the hearing administrative or judicial?	adm.	adm.	adm.	adm.	adm.	jud.	adm.	adm.	adm.	LS	jud.	LS	adm.	jud.	adm.	adm.	adm.	adm.	adm.	adm.

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COMPARISON OF MODEL REVOCATION ON ADMINISTRATIVE DETERMINATION LAW AND COMPARABLE STATE LAWS

	ROAD	AK	CO	DE	DC	IN	IA	LA	ME	MN	MS	MO	NV	NC	ND	OK	OR	UT	WA	WV
20. The law specifies that the following issues are within the scope of the hearing:																				
Whether the officer had reasonable grounds to believe the person was driving a vehicle while under the influence.		◇		◇			◇	◇	◇	◇				◇	◇	◇	◇	◇	◇	◇
Whether the person was arrested and charged with driving a vehicle while under the influence.								◇						◇	◇	◇	◇		◇	◇
Whether a chemical test was conducted under the implied consent law.		◇						◇		◇				◇					◇	
Whether the test results indicate alcohol concentration exceeding the legal standard.		◇					◇	◇		◇			◇	◇	◇	◇	◇	◇	◇	
Whether chemical tests were administered according to the requirements of state law.										◇				◇	◇	◇	◇		◇	◇
Whether the person was in fact driving while under the influence.				◇																◇
Whether the person was in fact driving while having a blood alcohol concentration exceeding the legal standard.	◇		◇									◇								◇
Whether there are sufficient grounds to support the proposed suspension or revocation.					◇			◇												
Whether the officer informed the person of his rights and of the consequences of taking or refusing the test.								◇		◇						◇	◇			
See the Law Summary for additional issues.						◇	◇				◇					◇	◇			
21. The law specifies that the standard of proof at the hearing is the "preponderance of the evidence."	◇	◇	◇	◇					◇	◇		◇		◇	◇					◇
22. The law specifies that a record of the hearing must be made.	◇		◇		◇		◇	◇		◇					◇	◇	◇	◇		

LS — see the Law Summary for more information

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COMPARISON OF MODEL REVOCATION ON ADMINISTRATIVE DETERMINATION LAW AND COMPARABLE STATE LAWS

	MODEL	AK	CO	DE	DC	IN	IA	LA	ME	MN	MS	MO	NV	NC	ND	OK	OR	UT	WA	WV
23. Where is the hearing usually held?				NA	NA				NA											
In the county where the arrest occurred.							◇			◇	◇	◇		◇		◇	◇	◇	◇	◇
In the county where the person resides.								◇					◇							
Other — See the Law Summary.	◇	◇	◇			◇									◇					
24. Are any presumptions applicable to the hearing created on the basis of chemical test results?																		LS		
Test results showing BAC exceeding the legal standard create a prima facie presumption the person was under the influence.					◇															
Test results showing BAC exceeding the legal standard create a conclusive presumption the person was under the influence.				◇																
No presumption applicable to the hearing is created (although presumptions applicable to the criminal prosecution may be created).	◇	◇	◇			◇	◇	◇	◇	◇	◇	◇	◇	◇	◇	◇	◇		◇	◇
25. Following the hearing, is judicial review of an adverse decision available?	yes	yes	yes	yes	yes	LS	yes	yes	yes	yes	NA	LS	yes	no	yes	NA	yes	yes	yes	yes
26. Does a petition for judicial review stay the suspension or revocation?					NA	NA	NA			NA	NA	LS		NA		NA		NA		
No, the license action is not stayed.				◇				◇							◇		◇			
No, a stay is not automatic, but the court may grant a stay on specified grounds.	◇	◇	◇						◇				◇						◇	◇

LS — see the Law Summary for more information

NA — the law does not specify this information, or the question is not applicable

COMPARISON OF MODEL REVOCATION ON ADMINISTRATIVE DETERMINATION LAW AND COMPARABLE STATE LAWS

	MODAD	AK	CO	DE	DC	IN	IA	LA	ME	MN	MS	MO	NV	NC	ND	OK	OR	UT	WA	WV
27. Is the officer who administers a chemical test required to warn the person of the consequences of a BAC which exceeds the legal standard?	no	no	no	no	no	no	yes	yes	no	yes	no	no	no	yes	no	yes	yes	yes	yes	no
28. Is a person who refuses to submit to a test subject to the same procedures for license suspension or revocation as the person whose BAC exceeds the legal standard?		yes	yes	yes	no	yes	yes	yes	no	yes	yes	no	yes	yes	yes	yes	yes	no	yes	no
29. The level of alcohol concentration at which driving a vehicle is unlawful in this state (illegal per se) is —		0.10	0.15	0.10	0.10	0.10	0.13	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.08	0.08	0.10	NA
30. The level of alcohol concentration at which a person driving a vehicle is subject to license action (administrative per se) is —	0.10	0.10	0.15	NA	NA	0.10	0.10	0.10	0.10	0.10	0.10	0.13	0.10	0.10	0.10	0.10	0.08	0.08	0.10	0.10

LS — see the Law Summary for more information

NA — the law does not specify this information, or the question is not applicable

Discussion of Interstate Aspects of ROAD

The Model Law doesn't deal with the interstate aspects of revocation on administrative determination because the comparable state laws do not deal with that aspect of the problem. At some time in the near future, as the concept of revocation on administrative determination is accepted in more and more states, it will be necessary to deal with the following issues:

1. When the department revokes the privilege of a nonresident under the ROAD law, should that action be reported to the licensing agency in the nonresident's home state?

Should such a report be made in all cases, or only in those cases where the home state also has a ROAD law? If the person is later convicted of driving while under the influence on the basis of the same incident, should the conviction also be reported to the home state? If the person is acquitted or otherwise not convicted, should that disposition of the criminal charges also be reported?

Although the ROAD law does not address these questions, some state driver licensing laws, those with provisions comparable to Uniform Vehicle Code (UVC) § 6-202 (c), already require reporting all suspensions and revocations to the nonresident's home state. Also, most state driver licensing laws have provisions comparable to UVC § 6-202 (b) which require or authorize reporting convictions of nonresidents to the home state.

2. If a state driver licensing agency receives the kind of notice discussed above that one of its licensees has been subjected to revocation on administrative determination in another state, should the agency give effect to that revocation in the home state?

For example, if a person licensed in state X has his or her nonresident privilege revoked on administrative determination in state Y, should state X also revoke the person's driving privileges? Should that action be mandatory or discretionary? Should a hearing in state X be provided? Should the ROAD revocation by state Y constitute an "alcohol or drug related enforcement contact" in state X for purposes of section 6 of the ROAD Law?

Although the Model ROAD Law does not address these questions, the driver licensing laws of several states authorize the driver licensing agency to "give such effect to conduct of a resident in another state as is provided by the laws of this State had such conduct occurred in this State." These laws are similar to UVC § 6-203 (c) (Supp. 1979). These laws would allow

the agency to give effect to an administrative determination revocation in another state. Many states have laws similar to UVC §§ 6-203 (a) and (b) which allow the home state to suspend or revoke the license of a resident on the basis of a conviction in another state.

3. Should the enforcement officer take possession of a drivers license issued by another state?

The Model ROAD Law now provides (§ 5) that an enforcement officer takes possession of the arrested person's license only if it is issued by the state in which the arrest occurs. In this respect, the Model agrees with the laws of eight states. Seven other states with comparable laws require the officer to take possession of any license, regardless of where issued.

SUMMARY SUSPENSION OF DRIVER LICENSES OF DRUNKEN DRIVERS—CONSTITUTIONAL DIMENSIONS

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Increasingly, public conern has turned toward the problem of drunk driving. Every year, over half of the fatalities occurring on our nation's highways involve persons who are operating motor vehicles while under the influence of alcohol. In response to this concern numerous State legislatures have begun to pass stricter laws to deal with the problem. While the approaches taken by the various States have varied considerably, at the forefront of this movement are statutes which allow a State to suspend summarily a person's driver's license upon the establishment, usually before an administrative officer, of probable cause to believe that the person was operating a motor vehicle while under the influence of alcohol.

These statutes generally are of two types: those that allow suspension without a pre-termination hearing upon the establishment of both probable cause for arrest and the refusal by the driver to submit to an alcohol test, and those which will allow termination upon the certification by the arresting officer that the driver was operating a motor vehicle while under the influence.

An example of the first type of statute is that which was recently enacted in the State of Minnesota. Under Minn. Stat. Sec. 162.123, the Commissioner of Public Safety may summarily suspend an individual's driver's license for a period of 90 days upon certification by an arresting officer (1) that there was probable cause for the officer to believe that the driver was operating his motor vehicle while under the influence of alcohol and (2) that the driver refused to submit to a chemical testing procedure to determine the actual alcohol content in his blood.* Although Minnesota does not provide for a hearing prior to suspension, the driver may request an administrative review of his suspension which must be provided within 15 days following his request. If not satisfied with this administrative review, the driver may then request a judicial hearing.

An example of the second type is W. Va. Code Sec. 17C-5A-2, which allows the summary administrative suspension of a driver's license merely upon the certification by the arresting officer that the driver was operating a motor vehicle while under the influence of alcohol. Much like Minnesota, West Virginia will provide the driver with a post-termination hearing if the driver so requests.

Regardless of which procedure is followed, such summary administrative suspensions of an individual's driver's license raise important questions regarding the provisions of procedural due process. The United States

*At least 13 States allow immediate summary suspension of a driver's license for refusal to submit to alcohol level testing. These include Alabama, Alaska, Delaware, Iowa, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Rhode Island, New Hampshire, and New Mexico.

Supreme Court has recognized the fact that once a driver's license has been granted to an individual he acquires a property interest in that license.

> Once licenses are issued, ... their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important rights of the licensees. In such cases the licenses are not to be taken away without the procedural due process required by the Fourteenth Amendment. *Bell* v. *Burson*, 402 U.S. 535, 539, 91 S. Ct. 1586, 29 L.Ed. 2d 90 (1971).

Since a person clearly has a property interest in the continued possession of a driver's license, it therefore must be determined whether summary suspension procedures such as those utilized in Minnesota and West Virginia meet the requirements of procedural due process.

Traditional Areas in Which Summary Suspension has been Allowed

The U.S. Supreme Court traditionally has recognized certain areas in which property may be seized summarily without affording the owner a pre-termination hearing. These areas have included:

Protection of national security during wartime.

Protection of the federal government's revenues.

Protecting the public against economic injury, such as collapse or mismanagement of banking institutions.

Protecting the public health from unsafe food and drugs.**

The concept of summary State action arises from two distinct sources. The first of these is the nineteenth-century concept of broad police powers whereby the State is capable of exercising its authority to protect the public health and welfare from either actual or perceived threats to its well-being. Freedman at 3. The second source is the tort law concept that an individual is entitled to use self-help without resorting to legal procedure in order to abate a nuisance. *North American Cold Storage* v. *City of Chicago*, 211 U.S. 306, 29 S.Ct. 101, 53 L.Ed. 195 (1908).

North American Cold Storage, one of the first cases recognizing the government's power to confiscate property summarily in order to preserve the public health and safety. The case involved the attempted seizure by Chicago authorities of spoiled poultry under the provisions of a municipal ordinance authorizing such a seizure. The owner of the processing plant in which the chickens were held refused to allow the Chicago authorities into the plant, and in response they would not allow the owner to further conduct business. The Supreme Court upheld the action of the Chicago authorities, recognizing that the legislature has broad power to protect the health and

**Freedman, "Summary Action by Administrative Agencies, 40 U. of Chi. L.R.1 (1972).

safety of its citizenry and can determine that because of practical considerations and the perceived threat to public health that a pre-termination hearing is not necessary. "The right to so seize is based upon the right and the duty of the state to protect and guard, as far as possible, the laws and health of its inhabitants." *North American Cold Storage*, 211 U.S. at 315.

A case similar to *North American Cold Storage*, also involving food products, is *John Quincy Adams* v. *City of Milwaukee*, 228 U.S. 572, 33 S.Ct. 610 (1913). In *Adams*, a dairy farmer who lived outside the City of Milwaukee sought to enjoin enforcement of a Milwaukee ordinance which allowed summary seizure of mislabeled milk which was attempted to be shipped into the city. The Court upheld the Milwaukee ordinance, recognizing the broad scope of the police power available to protect public health and the fact that confiscation was the only manner in which the city could efficiently prevent the unwholesome milk from being introduced into the market.

Both *Adams* and *North American Cold Storage* recognized that practical considerations could allow the State to take summary action against the individual where, as was the case in *North American*, provision of a pre-seizure hearing would have, at worst, permitted the poultry onto the market during the pre-seizure stage and would have, at best, necessitated the fiscal and administrative burdens of guarding or impounding the meat before and during the hearing. In both cases the Court felt that requiring pre-termination hearings would have defeated the government's substantial interest in preserving public health.

Two later cases recognize that the concept of summary action may be expanded beyond the area of public health and safety. In *Fahey* v. *Mallonee*, 332 U.S. 245, 67 S.Ct. 1552, 91 L.Ed. 2030 (1947), the Court recognized that the area of permissible summary action includes the take-over and regulation of a savings and loan institution. "The delicate nature of the institution and the impossibility of preserving credit during an investigation has made it an almost invariable custom to apply supervisory authority in this summary manner." *Fahey* v. *Mallonee*, 332 U.S. at 253.

The *Fahey* Court's determination turned largely on practical considerations and historical precedent. It recognized that in order to maintain public confidence in both the specific institution involved and in the banking system as a whole it was necessary for the government to be empowered to take prompt action in order to remedy the apparent mismanagement of the bank. Further, the banking industry had been traditionally subjected to pervasive regulation.

In *Ewing* v. *Mytinger & Casselberry*, 339 U.S. 594, 70 S.Ct. 870, 94 L.Ed. 1088 (1950), the Court allowed the expansion of the summary action concept into the area of mislabeled drugs. The case involved the summary seizure of a misleadingly labeled food supplement (Nutrilite) which was neither dangerous nor harmful to the public health. The Court's decision was based on two considerations. The first was that the legislature has the power to determine those concerns which are serious enough to enable the government to act summarily, and the second was the application of a simple

balancing test--striking a balance between the public good served by the seizure and the private harm which would result:

> Congress weighed the potential injury to the public from misbranded articles against the injury to the purveyor of the article from a temporary interference with its distribution and decided in favor of the speedy, preventative device of multiple seizures. We would impair or destroy the effectiveness of that device if we sanctioned the interference which a grant of jurisdiction to the District Court would entail. *Ewing*, 339 U.S. at 601-602.

Summary action has also been allowed in the areas of securities regulation and government-related, private employment. In *R. A. Holman & Co.*, v. *Securities & Exchange Commission*, 229 F.2d 127 (D.C. Cir. 1962) a broker sued the S.E.C. to have declared invalid a Commission order rescinding the petitioner's exemption from a registration requirement for a specific stock issue. The Court held that the summary rescission of petitioner's exemption was constitutional. "In a wide variety of situations, it has long been recognized that where the harm to the public is threatened, and a private interest infringed is reasonably deemed to be of less importance, an official body can take summary action pending a later hearing." *R. A. Holman & Co.* 229 F.2d at 131.

In *Cafeteria & Restaurant Workers Union, Local 473* v. *McElroy*, 367 U.S. 886, 81 S.C. 1743, 6 L.Ed 2d 1230 (1961) the Supreme Court allowed the summary suspension of a security clearance granted to a civilian employee working at a secured naval installation. In determining whether or not a pretermination hearing should have been afforded the civilian employee, the Court again applied a simple balancing test similar to that used in *Ewing*. "...[C]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action." *Cafeteria & Restaurant Workers Union*, 367 U.S. at 895.

The Court also recognized that due process is not a fixed standard to be applied to all cases but rather is dependent upon a balancing of both the nature of the private interests and of the public interests involved. "The Fifth Amendment does not require a trial type hearing in every conceivable case of government impairment of private interest....The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." *Cafeteria & Restaurant Workers Union*, 367 U.S. at 894-95.

The cases referred to in this section have generally been classified as emergency doctrine cases. However, *Ewing* v. *Mytinger & Casselberry*, *Fahey* v. *Mallonee*, and *Cafeteria & Restaurant Workers Union* v. *McElroy* amply demonstrate that the so-called emergency doctrine is often applied in situations which do not necessarily involve emergency conditions. Rather, the Court seems generally to apply a balancing test in which the importance of the governmental interest is set off against the degree of private harm which will result from the summary deprivation of property. Included in this calculus are numerous factors: (1) the degree to which the governmen-

tal objective will be defeated by the providing of a prior hearing, (2) practical considerations including administrative and fiscal burdens, and (3) the degree to which the private interest will be harmed as a result of the summary seizure of the property.

In addition, when upholding summary action, the Court has recognized that the injured person will have a private tort action against any public officers who abuse their authority. *North American Cold Storage* v. *City of Chicago*, 211 U.S. 306, 316.

The *Mathews* v. *Eldridge* Standard for Due Process

More recent cases have further refined the balancing test which the Court will apply in order to determine whether or not a hearing is necessary prior to the deprivation of a property interest. The test which the Court has relied upon most recently is that which was set out in *Mathews* v. *Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976).

Although the test originally applied in *Mathews* was used to determine what type of hearing was necessary prior to the deprivation of a property interest, later cases have used the same test in order to determine whether any hearing is needed before the government may act. The test is expressed in the following language from *Mathews*:

> [I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interests through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and, finally, the government's interest, including the function involved and the fiscal or administrative burdens that the additional procedures would entail. *Mathews*, 424 U.S. at 334-35.

Implicit in the *Mathews* analysis is the consideration of two additional factors. The first of these, related to the nature of the private interest affected, is the degree of deprivation which the private party will suffer. The Court has indicated that the severity of deprivation can be determined by examining two factors: the degree to which the private parties may be compensated for their loss of property and how long they will be deprived of their property until some type of a post-deprivation hearing is afforded. *Mackey* v. *Montrym*, 443 U.S. 1, 99 S.Ct. 2612, 61 L.Ed 2d 321 (1978). Secondly, when considering the nature of the government's interest, it is also proper to consider whether or not that interest would be defeated or severely limited by the time delay which is inherent in the provision of a hearing.

The Government's Interest in Maintaining Highways

Applying the *Mathews* analysis to the situation whereby a driver's license is suspended summarily when a driver is arrested for drunk driving suggests that the Supreme Court would allow such action. The Supreme Court

has several times recognized that the maintenance of highway safety and the prevention of automobile accidents are an important State interest. "Far more substantial than the administrative burden is the important public interest in safety on the roads and highways, and the prompt removal of the safety hazard." *Dixon* v. *Love*, 431 U.S. 105, 114, 97 S.Ct. 1723, 52 L.Ed. 2d 172 (1977). More recent cases have directly analogized the suspension of a driver's license upon refusal to take alcohol blood-level tests to the situations which were present in *North American Cold Storge* and *Ewing*. "We have traditionally accorded the states great leeway in adopting summary procedures to protect public health and safety. States surely have at least as much interest in removing drunken drivers from their highways as in summarily seizing mislabeled drugs or destroying spoiled food stuffs." *Mackey* v. *Montrym*, 443 U.S. at 17 (1978).

The Nature of the Private Harm as a Result of Summary Suspension

In order to apply the *Mathews* v. *Eldridge* analysis to driver's license suspensions, the nature of the private interest must also be examined. The Court has recognized that while the property interest which a driver holds in his driver's license is important, it is not of the same magnitude as are other interests, i.e., disability payments. "Unlike the Social Security recipients in *Eldridge*, who at least could obtain retroactive payments if their claims were subsequently sustained, a licensee is not made entirely whole if his suspension or revocation is later vacated. On the other hand, a driver's license may not be so vital and essential as are social insurance payments on which the recipient may depend for his very subsistence." *Dixon* v. *Love*, 431, U.S. at 113.

The degree to which a driver may suffer such irrevocable harm will depend, to a large extent, upon the length of time the driver is without a license prior to the hearing. "The duration of any potentially wrongful deprivation of a property interest is an important factor in assessing the impact of official action on the private interest involved." *Mackey* v. *Montrym*, 433 U.S. at 12 (1978). Therefore, in order for a summary suspension to comply with the *Mathews* v. *Eldridge* due process standard, the State should provide some type of post-suspension hearing almost immediately. This approach has been followed in virtually all States which allow such summary suspensions.

The Risk of Error Inherent in Summary Procedures

Finally, the third part of the *Mathews* analysis must be applied to determine the likelihood of an erroneous deprivation as a result of summary driver's license suspensions and whether an alternative method would suffice. The current Court seems to believe that the risk of such an erroneous deprivation is small in relation to the important governmental interest which is served by removing a drunk driver from the highways.

In *Mackey* v. *Montrym*, 443 U.S. 1, even the existence of a factual dispute as to whether the defendant had refused a breathalyzer test did not shake the Court's confidence in the initial report of an arresting officer. "...[w]hen disputes as to historical facts do arise, we are not persuaded that the risk of error inherent in the statute's initial reliance on the

representation of the reporting officer is so substantial in itself as to require that the Commonwealth stay its hand pending the outcome of any evidentiary hearing necessary to resolve questions of credibility or conflicts in the evidence." *Mackey* v. *Montrym*, 443 U.S. at 15.

The *Mackey* v. *Montrym* Decision

The Court's current attitude toward the summary suspension issue can best be undertood by a careful reading of *Mackey* v. *Montrym*, 443 U.S. 1 (1978), discussed earlier. *Mackey* involved the summary suspension of an individual's driver's license for refusing to submit to an alcohol breath-analysis test following his arrest for driving under the influence. In accordance with the relevant Massachusetts statutory provision, the arresting officer certified to the registrar of motor vehicles that he had probable cause to believe that Montrym has been operating his automobile while under the influence of alcohol and that Montrym had refused to take a breathalyzer test. The registrar then summarily suspended Montrym's license.

Chief Justice Burger, writing for the majority, upheld the constitutionality of the Massachusetts law, holding it to be a valid exercise of legislative authority in advance of the cause of highway safety. In his opinion, the Chief Justice applied the three-step analysis used in *Mathews* v. *Eldridge* in coming to his conclusion. This included an examination of: (1) the nature of the private interest being abrogated by governmental action; (2) the possibility that the summary suspension of Montrym's driver's license would result in an erroneous deprivation; and (3) the importance of the governmental interest being advanced by the use of summary procedures.

In addition to ruling favorably for the State on all three parts of the *Mathews* analysis, the majority was unable to distinguish *Mackey* from *Dixon* v. *Love*, 431 U.S. 105 (1977), an earlier case which involved the summary administrative revocation of a driver's license. In *Dixon*, the Court upheld summary suspension and distinguished it from the earlier driver's license suspension case of *Bell* v. *Burson*, 402 U.S. 535 (1971) which concerned the constitutionality of a Georgia statute mandating the suspension of a driver's license when its holder was involved in an accident but failed to post a sufficient bond to cover any potential civil liability for damages. Unlike *Bell*, both *Dixon* and *Mackey* concern a matter about which the State has a great deal of concern; namely, highway safety.* This factor fully distinguishes *Bell* v. *Burson*, where the only purpose of the Georgia statute there under consideration was "to obtain security from which to pay any judgments against the licensee resulting from the accident," *Bell* v. *Burson*, 402 U.S. at 540. *Dixon* and *Mackey*, however, both "...involve the constitutionality of a statutory scheme for administrative suspension of a driver's license for statutorily defined cause without a pre-suspension hearing. In each, the sole question presented is the appropriate timing of the legal process due a licensee. And, in both cases, that question must be determined by

*See *Chrisner* v. *Complete Auto Transit*, 645 F.2d 1251 (6th Cir. 1981) where a civil rights action was defeated because the company's hiring procedures, while in effect discriminatory, were related to the goal of maintaining safe highways.

reference to the factors set forth in *Eldridge*." *Mackey* v. *Montrym*, 443 U.S. at 11.

In *Mackey*, a 5-4 decision in which Stewart, Brennan, Marshall, and Stevens dissented, much of the majority's support for the Massachusetts statute was based on the fact that under the Massachusetts law a driver whose license was suspended was provided with an immediate post-suspension hearing before the registrar if he so desired. In the majority's judgment, this provision of the statute was relevant to two factors of the *Mathews* analysis. First, by minimizing the amount of time during which Montrym could be wrongfully deprived of his license, the Court felt that the first factor of the *Mathews* analysis, the degree of private harm suffered as a result of the summary action, would be minimized. Second, the majority also felt that providing a prompt post-suspension hearing would minimize the change that a license would be suspended erroneously, the second factor of the *Mathews* analysis.

While the *Mackey* Court felt that providing a prompt post-suspension hearing was a major factor in allowing the Massachusetts statute to stand, it did not feel that the fact that the suspension was predicated wholly upon the report of the arresting officer was a threat to the statute's constitutionality. Rather, the Court seemed to feel that the arresting police officer would be in a better position to determine if the driver had been violating the drunk-driving laws than would the registrar. "The officer whose report triggers a driver's suspension is a trained observer and investigator. He is, by reason of his training and experience, well suited for the role the statute accords him in the pre-suspension process." *Mackey* v. *Montrym*, 443 U.S. at 14. Also see *Barry* v. *Barchi*, 443 U.S. 55, 99 S.Ct. 2642, 61 L.Ed. 2d 365. Furthermore, as discussed earlier, any abuse of discretion by the police in regard to the pre-suspension process would expose the officer to personal liability for any harm suffered by the licensee. See *supra*, at 10. This, the Court felt, was a sufficient safeguard to minimize the risk that a license would be suspended erroneously.

Balanced against what the *Mackey* Court saw as a minimal deprivation of property and a low risk of error is the strong governmental interest in highway safety. See *supra* at 11. While much of the dissenting opinion in *Mackey* focused on the fact that the Massachusetts statute was merely a penalty for failure to cooperate with the police, the majority opinion firmly acknowledged the statute's relation to the "paramount interest the Commonwealth has in preserving the safety of its public highways...." *Mackey* v. *Montrym*, 443 U.S. at 17. The result in *Mackey* was that the Court upheld the summary suspension of Montrym driver's license despite the lack of a pre-suspension hearing.

While the four *Mackey* dissenters have by now probably been pared to three with the departure of Justice Stewart, they did bring out two points which may be useful in attempting to draft a statute allowing summary suspension. The first of these is the penal appearance of the Massachusetts law. While those who refuse the Massachusetts breathalyzer test will suffer the suspension of their driver's licenses, those who take the test and fail will not be exposed to the same fate unless a conviction is obtained. Such a conflicting approach weakens any argument that the purpose of the law is

to remove drunk drivers from the highways. Secondly, the dissenters denigrated the value of the post-suspension hearing provided in *Mackey*. Instead of considering the merits of the suspension, the registrar was statutorily limited to a consideration of whether the officer's report contained sufficient data upon which to base a suspension (i.e., probable cause and refusal) and to an examination of the report for clerical errors. Such a narrowly limited review was not thought to be sufficient since the registrar has essentialy no power to prevent suspension when provided with a report which meets the statutory requirements. In addition, under the Massachuetts approach, the licensee was not informed of his right to a post-suspension hearing. Such a failure, in the dissenters' opinion, further prejudiced the licensee and was another factor in their conclusion that the Massachusetts statute had denied Montrym procedural due process.

The import of the *Mackey* decision is that the current Court is willing to allow the use of summary proceedings for the suspension of a driver's license upon arrest for drunk driving. Furthermore, if a State were to provide a prompt (probably within 10 days) post-suspension hearing at which the substantive issues could be considered by an officer with discretion to overturn the suspension, even the dissenters in *Mackey* may be persuaded to support summary action.

The Burger Court's receptiveness to the interests served by a summary suspension has also been indicated in several more recent cases involving similar actions. In *Barry* v. *Barchi*, 443 U.S. 55 (1979) the Court upheld the summary suspension of a horse trainer's license upon a showing that one of his animals had raced while some illegal drugs were in its blood. In *Barry*, the Court recognized that the harm to the individual trainer as a result of the summary action could be severe. However, they also indicated that the State had a strong interest in maintaining the integrity of the racing system and that initial reliance upon the report of an expert who administered the blood test to the horse was acceptable. Summary action was therefore appropriate. However, *Barry* emphasizes that even under the Burger Court, a prompt post-suspension hearing must be afforded the licensee in order to validate the summary action. The need for a prompt post-suspension hearing has also been emphasized in *Ciechon* v. *City of Chicago*, 634 F.2d 1055 (7th Cir. 1980) in which the summary suspension of firefighters following an internal investigation was upheld. There, the Court, citing *Barry* v. *Barchi*, emphasized that summary action was permissible only if the employees were provided with a prompt later hearing.

The Model for Analysis

In summary, the U.S. Supreme Court has declared the relevant analysis to apply to summary suspension of driver licenses to be that of *Mathews* v. *Eldridge*. It so stated in *Dixon* v. *Love* and *Mackey* v. *Montrym*. Although it did not state specifically that the appropriate analysis was that of *Mathews* v. *Eldridge*, in *Barry* v. *Barchi* the U.S. Supreme Court approached the question of summary suspension of a horse trainer's license in a similar fashion.

Therefore, the current attitude of the Court toward summary suspension of licenses is *Mathews* as amplified by principles extracted primarily from

four other cases. They are: *Bell* v. *Burson*, 402 U.S. 535, 91 S.Ct. 1586 (1971); *Dixon* v. *Love*, 431 U.S. 105, 97 S.Ct. 1723 (1977); *Mackey* v. *Montrym*, 443 U.S. 1, 99 S.Ct. 2612 (1979); and *Barry* v. *Barchi*, 443 U.S. 55, 99 S.Ct. 2642 (1979). By relating the principles of these cases to the three factors of analysis set forth in *Mathews*, we may synthesize and describe the manner in which the *Mathews* factors may be expected to be applied in summary suspension of a driver's license upon arrest for driving while under the influence.

Mathews Factor No. 1: "The private interest that will be affected by the official action."

First, all four Supreme Court cases agree that a driver's license is an entitlement which may be taken away by the State only by procedures which meet 14th Amendment standards of due process of law. Beginning with the premise that due process principles apply, the initial evaluation concerns the degree of the deprivation of a private interest. That is, to what extent may the private party be compensated for loss of the interest and how long will the party be deprived of that interest until some sort of post-deprivation hearing and resolution is provided. *Mackey*. Where a driver's license has been suspended, there is no way in which the private party may be fully compensated for its loss during the period of the suspension. Although there is a possibility of some sort of recovery in damages, the fact remains that the licensee cannot be made whole for the loss of use of the motor vehicle for the period of suspension. Similarly, where a horse trainer summarily loses his license, which is later restored, there is no way that the trainer can be adequately compensated for loss of the clients collected over the span of his career. *Barry* (concurring opinion). Conversely, where a party is erroneously deprived of disability benefits, the benefits wrongfully withheld may be paid after determination of the right to receive them.

Nevertheless, government may be in a position to minimize the degree of deprivation by providing for some type of restricted permit during the suspension period. *Dixon*. Similarly, the shorter the period of deprivation the stronger becomes the position of the State in taking summary action. The Supreme Court sustained a potential 90 days' loss of a driver's license for refusal to submit to a breath test when arrested for drunken driving in *Mackey*. In *Dixon* the Supreme Court upheld license revocation for an indefinite period where the driver's license had been suspended three times within a period of 10 years.

Distinct from the issue of the term of the license suspension is the question of the promptness of the State in affording a post-suspension hearing which could rectify any mistake in imposing the suspension. In *Mackey* the Court demonstrated its concern with the timing of the post-suspension hearing by interpreting the statute to provide for an immediate "walk-in" hearing. In *Dixon*, a delay of 20 days before hearing was possible, but the Court held the procedures to meet the requirements of due process of law.

Mathews Factor No. 2: "The risk of an erroneous deprivation of such interests through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards."

Where the summary license suspension is based on official records (e.g., prior traffic offense convictions) the Court appears to assume that the basic facts are not in dispute, that any dispute has been resolved, or that any opportunity to dispute them has been waived. *Dixon*. Where the basic facts are disputed, the Court will address the question of whether the procedures followed in making an *ex parte* determination of the basic facts are sufficiently reliable to justify a delay in resolving issues of credibility and conflict in the evidence. *Mackey*, *Barry*. Where the State procedures require an affidavit of an arresting officer, endorsed by a third person, and endorsed by the police chief, the Court will conclude that the risk of error is insubstantial. *Mackey*. This is true because due process of law does not mandate "perfect, error-free determinations." *Mackey*. So long as the procedures are designed to provide a reasonably reliable basis for concluding the facts are as a responsible government official warrants them to be, the Court considers such procedures to be in accordance with due process of law. *Mackey*, *Barry*. Furthermore, the question of risk of error is to be controlled by the generality of cases and not by those cases which could be termed the "rare exceptions." *Mackey*. Thus, where the procedures indicate that the private interest is not being "baselessly compromised" the *ex parte* findings of fact will generally be accepted. *Barry*.

Mathews Factor No. 3: "The government's interest, including the function involved and the fiscal or administrative burdens that the additional procedures would entail."

Where it is mentioned, in all four cases the Justices of the U.S. Supreme Court are unanimous in agreeing that if a genuine emergency situation exists, the State may act summarily to suspend a license, provided post-suspension procedures meet due process standards. However, the Justices may not agree that, in fact, the situation presents a genuine emergency. Thus, in *Mackey*, the Court divided on this issue. The majority held that the State interest in removing druken drivers from the highways was at least as justifiable as summarily seizing mislabeled drugs or destroying spoiled foodstuffs. (Citing *Ewing* and *North American*.) The dissenters contended that the purpose of the suspension for refusing to submit to a breath test was not based upon emergency but was in truth based upon failure to cooperate with the police. They made the point that if removing drunk drivers from the highways were a genuine concern of the State, it would also suspend the licenses of persons who submit to a breath test and where the results show that the licensee was driving in violation of the law. However, where the public interest can be shown to be that of promoting safety on the roads and highways and prompt removal of safety hazards there seems to be little disagreement among the Justices. It appears that virtually all of them would agree that such a State interest is indeed important, acute, and perhaps, compelling. *Dixon*, *Mackey*.

Another consideration in the *Mathews* analysis is whether the government interest would be defeated or severely limited by the time delay inherent in providing a pre-deprivation hearing. *Mackey*. The majority in *Mackey* believed the government interest would be defeated or limited if a pre-deprivation hearing were required since a high-risk driver would be free to continue driving during the pre-hearing interval. However, the dissenters believed that the government interest was not removing drunken drivers from

the highways, but was, instead, punishing them for failure to cooperate with the police. Hence, the situation was such that no valid government interest would be demonstrably disserved by delay. *Mackey* (dissenting opinion). The dissenters in *Mackey* further stated that such *ex parte* deprivations are permitted by due process of law only when clearly necessitated by the exigencies of law enforcement. To them refusal to submit to a breath test was not such an exigency.

As further elaborated by the Court, in these four cases, the *Mathews* v. *Eldridge* analysis would appear to support the constitutionality of a State statute providing for the summary suspension of a driver's license upon being arrested for driving while under the influence. Such a statute should be designed as follows:

> The legislature should include in the statute a statement of purpose making clear that the government interest is that of protecting the safety of persons on the roads and highways by quickly removing persons who have shown themselves to be safety hazards by driving while under the influence.
>
> The statute should provide for the prompt submission of proper affidavits by the arresting officer and, perhaps, they should be verified by a third person in order to establish the reasonably reliable factual basis for summary suspension which the cases require.
>
> The licensee should be given immediate notice of the fact that his license will be suspended as a collateral consequence his arrest for driving while under the influence and he should be given immediate notice of the fact that an opportunity for a prompt post-suspension hearing is available. The notice should give adequate information to the licensee as to how that hearing process is to be implemented if he chooses to contest the suspension.
>
> The statute should provide procedures for a "speedy," "early," "prompt," or "immediate" hearing opportunity in which the hearing officer has authority to resolve any basic factual dispute and to provide prompt relief to the licensee in the event of improper suspension.
>
> Finally, the hearing officer should be authorized to conduct a hearing, the scope of which is broad enough to permit consideration of all factors relating to the adequacy of the grounds for the arrest for driving while under the influence.

The Civil Sanction--Criminal Sanction Distinction

Finally, it should be understood that summary suspension of a driver's license for arrest for driving while under the influence is completely independent of any criminal prosecution for the offense alleged. That is, the disposition of the criminal charge has no bearing on the validity of the suspension. The law is well established that persons may be sanctioned both criminally and civilly for the same conduct, for double jeopardy does not

apply to the civil sanction. Furthermore, because the two sanctioning processes are completely independent, if a drunk driving charge is dismissed or is plea bargained to a lesser offense, or if the trial results in an acquittal, the summary suspension remains valid. For example, persons convicted of felonies may, as a collateral consequence of the conviction, be denied veterans' employment preferences, veterans' benefits, the opportunity to be buried in a national cemetery, the right to vote (permitted by the Fourteenth Amendment) and similar civil sanctions.

In *Helvering* v. *Mitchell*, 303 U.S. 391, 58 S. Ct. 630, 82 L.Ed. 917 (1938), the Supreme Court determined the propriety of an attempt by the IRS to impose civil tax penalties on a taxpayer who had been acquitted of tax fraud. The Court stated:

> That acquittal on a criminal charge is not a bar to a civil action by the government, remedial in nature, arising out of the same facts on which the criminal proceeding was based has long been settled...[w]here the objective of the subsequent (civil) action likewise is punishment, the acquittal is a bar, because to entertain the second proceeding for punishment would subject the defendant to double jeopardy...Congress may impose both a criminal and a civil sanction in respect to the same act or omission; for the double jeopardy clause prohibits merely punishing twice, or attempting a second time to punish criminally, for the same offense." 303 U.S. at 397, 93 S.Ct. at 632.

Suspension of a driver's license upon arrest for drunken driving is remedial and not punitive. Its purpose is to remove a safety hazard from the highways.

Similarly, the U.S. Supreme Court has held that collateral estoppel does not bar the application of civil forfeiture penalities to a person who brings gem stones into the country illegally, but who is acquitted on criminal charges for lack of intent. *One Lot Emerald Cut Stones and One Ring* v. *U.S.*, 409 U.S. 232, 93 S.Ct. 489, 34 L.Ed. 2d 438 (1972). The Court stated:

> Moreover, the difference in the burden of proof in criminal and civil cases precludes application of the doctrine of collateral estoppel. The acquittal of the criminal charges may only have represented an "adjudication that the proof was not sufficient to overcome all reasonable doubt of the guilt of the accused." 409 U.S. at 235, 93 S.Ct. at 492.

The latest U.S. Supreme Court case on this question is *United States* v. *Ward*, 448 U.S. 242, 100 S.Ct. 2636 (1980). It involved an action brought by the United States to collect a "civil penalty" imposed for discharge of oil from a retention pit into navigable waters. The Court held the statutory penalty to be civil and said it does not trigger the protections afforded a criminal defendant. It referred, with approval, to a list of factors relevant to determining whether a so-called civil penalty is "remedial" or "punitive" in character. The *Mendoza-Martinez* factors are:

> Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of *scienter*, whether its operation will promote the traditional aims of punishment-retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned....*Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 83 S.Ct. 554; 372 U.S. at 169, 83 S.Ct. at 567-578.

In *Ward*, the Court indicated the *Mendoza-Martinez* list is neither exhaustive nor conclusive on the issue, but applied it to conclude that the statutory civil penalty was not punitive in nature. Only the clearest proof will suffice to show that such a civil penalty is punitive in either purpose or effect.

For further discussion of the concept and citations of other authorities, see Ch. 17, Sec. 14 "Restrictions Resulting from Arrest Without Conviction," in S. Rubin, *Law of Criminal Correction*, at 718 (2d ed. 1973); "The Collateral Consequences of a Criminal Conviction," 23 *Vand. L. Rev.* 929 (1970).

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